रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 50] नई दिल्ली, दिसम्बर 8—दिसम्बर 14, 2019, शनिवार/अग्रहायण 17—अग्रहायण 23, 1941
No. 50] NEW DELHI, DECEMBER 8— DECEMBER 14, 2019, SATURDAY/AGRAHAYANA 17— AGRAHAYANA—23, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 27 नवम्बर, 2019

का.आ. 2137.—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का केंद्रीय अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार के आदेश सं. एचडी 41 सीआईडी 2017, बैंगलुरु दिनांक 03 नवंबर 2018 के माध्यम से प्राप्त सहमति से विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का अधिनियम सं. 42) के अधीन गृह मंत्रालय संदर्भ सं. एफ.सं. II/21022/58(0244)/2016-एफसीआरए (एमयू) दिनांक 13.12.2016 से उत्पन्न अपराधों तथा अन्य किन्हीं प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों तथा अन्य किसी अधिनियम के अंतर्गत उसी संव्यवहार में अथवा श्री के. वी. अलबर्ट, मुख्य कार्यकारी; श्रीमती कैथरीन, पत्नी श्री के. वी. अलबर्ट तथा न्यासी एवं सचिव "न्यू लाइफ मिनिस्ट्रीज इन इंडिया", गोस्पेल होम, चिकाबालापुरा, कोलार, कर्नाटक तथा उनका पुत्र श्री प्रेम अलबर्ट एवं इसमें शामिल अन्यों के द्वारा अभिकथित रूप से कारित तथ्यों से उत्पन्न अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा. सं. 228/14/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 27th November, 2019

S.O. 2137.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka issued vide Order No. HD 41 CID 2017, Bengaluru, dated 3rd November 2018, hereby extends the power and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka to investigate into the offences arising out of MHA reference No. F.II/21022/58(0244)/2016-FCRA (MU) dated 13.12.2016 under Foreign Contribution Regulation Act, 2010 and any other attempts, abetments and conspiracies in relation to or in connection with above mentioned offences and any other offence or offences committed under any other Act in the course of the same transaction or arising out of the same set of facts alleged to have been committed by Shri K.V. Albert, Chief Functionary; Smt. Cathrin, W/o. Shri K.V. Albert and Trustee & Secretary of "New Life Ministries in India", Gospel Home, Chickaballapura, Kolar, Karnataka and their son Shri Prem Albert and others involved therein.

[F. No. 228/14/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 4 अक्तूबर, 2019

का.आ. 2138.—भारतीय आयुर्विज्ञान परिषद अधिनियम,1956 (1956 का 102) की धारा 11 की उप धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित और संशोधन करती है, अर्थात:-

उक्त प्रथम अनुसूची में

'मान्यता प्राप्त आयुर्विज्ञान अर्हता' [जिसे इसके आगे कालम(2) कहा गया है] शीर्षक के अधीन, केरल यूनिवर्सिटी ऑफ हेल्थ साइंसेज, त्रिशूर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम (3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात:-

(2)	(3)
"मेजिस्टर चिरूरगे (न्यूरो सर्जरी)"	एम.सीएच. (न्यूरो सर्जरी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह आमला इंस्टीट्यूट ऑफ मेडिकल साइंसेज,त्रिशूर में प्रशिक्षित किए गए छात्रों के संबंध में 2017 को या बाद में केरल यूनिवर्सिटी ऑफ हेल्थ साइंसेज, त्रिशूर" द्वारा प्रदत्त होगी)।
'डाक्टर ऑफ मेडिसीन (न्यूरोलॉजी)	डी.एम. (न्यूरोलॉजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह एम.ई.एस. मेडिकल कॉलेज ,पेरिनथलमन्ना में प्रशिक्षित किए गए छात्रों के संबंध में 2019 को या बाद में केरल यूनिवर्सिटी ऑफ हेल्थ साइंसेज, त्रिशूर" द्वारा प्रदत्त होगी)।

नोट: क. स्नातकोत्तर पाठ्यक्रम को दी गई ऐसी मान्यता अधिकतम 5 वर्ष के लिए होगी और उसके बाद इसका नवीकरण करवाना होगा।

ख. अपेक्षित मान्यता का समय से नवीकरण करवाने में विफल रहने पर, परिणाम स्वरूप, निरपवाद रूप से संबंधित स्नातकोत्तर पाठ्यक्रम में प्रवेश बंद हो जाएगा।

[सं. यू-12012/473/2019/एम.ई.-I/एफटीएस 8031060]

पी. के. बंदोपाध्याय, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 4th October, 2019

S.O. 2138.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule -

a) against "Kerala University of Health Sciences, Thrissur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Magister Chirurgiae (Neurosurgery)"	M.Ch. (Neurosurgery) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being trained at Amala Institute of Medical Sciences, Thrissur on or after 2017).
"Doctor of Medicine (Neurology)"	DM (Neurology) (This shall be a recognized medical qualification when granted by Kerala University of Health Sciences, Thrissur in respect of students being trained at M.E.S. Medical College, Perinthalmanna on or after 2019).

Note: a. The recognition so granted shall be for a maximum period of 5 years from the date of Notification upon which the Institute shall have to apply for renewal of recognition.

b. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admission to the Postgraduate Course.

[No. U-12012/473/2019-ME-I/FTS-8031060]

P. K. BANDYOPADHYAY, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 2 दिसम्बर, 2019

का.आ. 2139.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन एनटीपीसी लिमिटेड के खरगोन सुपर थर्मल पावर प्रोजेक्ट, पोस्ट खेड़ी (बुजुर्ग), एस.ओ. बेड़िया, जिला खरगोन (मध्य प्रदेश)-451113, जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती है।

[फा. सं. 11011/9/2017-हिंदी]

अनिरुद्ध कुमार, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 2nd December, 2019

S.O. 2139.—In pursuance of Sub Rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notify the Khargone Super Thermal Power Project, Post-Khedi (Bujurg), S.O. Bediya, District-Khargone (Madhya Pradesh)-451113 of NTPC Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[F. No.11011/9/2017-Hindi]

ANIRUDDHA KUMAR, Jt. Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 5 दिसम्बर, 2019

का.आ. 2140.—केंद्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मित्रा एस.के. प्राइवेट लिमिटेड, होल्डिंग सं. 22/107, वार्ड सं. 9 पी.ओ.खंजाचक, पहली मंजिल, इंडिया होटल के साथ, हल्दिया, जिला - पूर्व मेदिनीपुर, पश्चिम बंगाल - 721602 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए खनिज और अयस्क के निरीक्षण करने के लिए-

(क) समूह 1 : लौह अयस्क एवं फेरामैंगनीज स्लैग सहित, फेरामैंगनीज और

(ख) समूह 2 : क्रोम कंसन्ट्रेट सहित क्रोम अयस्क,

भारत सरकार के वाणिज्य मंत्रालय की राजपत्र के भाग II, खंड 3, उपखंड (ii) में प्रकाशित, दिनांक 20 दिसंबर, 1965 की अधिसूचना संख्या का.आ. 3975 तथा दिनांक 20 दिसंबर, 1965 की अधिसूचना संख्या का.आ.3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट क्रमश: उक्त खनिज और अयस्क का निर्यात से पूर्व कोलकता पत्तन, हल्दिया पत्तन एवं हल्दिया पत्तन में सागरऐंकरज में निरीक्षण करने के लिए निम्नलिखित शर्तों के अधीन एक अभिकरण के रूप में मान्यता देती है, अर्थात:

(i) यह अभिकरण, खनिज और अयस्क समूह -I के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 तथा खनिज और अयस्क समूह-II के निर्यात (निरीक्षण) नियम, 1965 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद द्वारा नामित नाम निर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन विनिर्दिष्ट अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा. सं. के 16014/10/2019-निर्यात निरीक्षण]

दिवाकर नाथ मिश्रा,संयुक्त सचिव (निर्यात निरीक्षण प्रभाग)

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 5th, December, 2019

S.O. 2140.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s Mitra S.K. Private Limited, Holding No. 22/107, Ward No. 9, P.O. – Khanjanchak, 1st Floor, Beside India Hotel, Haldia, Dist.- Purba Medinipur, West Bengal – 721602, as an

agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores,-

(a) Group-I: Iron Ore and Ferromanganese including Ferromanganese Slag; and

(b) Group – II: Chrome Ore including Chrome Concentrate,

as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette, part II, section 3, sub-section (ii) *vide* notification number S.O. 3975 dated the 20th December, 1965 and S.O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Kolkata Port, Haldia Port and Sagar Anchorage at Haldia Port, subject to the following conditions, namely: —

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965 and Export of Minerals and Ores – Group II (inspection) Rules, 1965; and

(ii) the said agency, in performance of its function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. K-16014/10/2019 - Export Inspection]

DIWAKAR NATH MISHRA, Jt. Secy. (Export Inspection Division)

कोयला मंत्रालय

नई दिल्ली, 10 दिसम्बर, 2019

का.आ. 2141.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उप–धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का. आ. 762, तारीख 9 मई, 2019, जो भारत के राजपत्र, भाग II, खण्ड 3, उप–खण्ड (ii) तारीख 18 मई, 2019 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की 184.81 हेक्टेयर (लगभग) या 456.66 एकड़ (लगभग) भूमि और उस पर के सभी अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार को पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और छत्तीसगढ़ सरकार से पुनः परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 183.186 हेक्टेयर (लगभग) या 452.65 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार अर्जित किए जाने चाहिए ;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 183.186 हेक्टेयर (लगभग) या 452.65 एकड़ (लगभग) माप वाली भूमि के सभी अधिकार अर्जित किए जाते है

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/529, तारीख 24 अक्तूबर, 2019 का निरीक्षण कलक्टर, जिला सुरजपुर (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, कांउसिल हाउस स्ट्रीट, कोलकाता – 700001 के कार्यालय में या साउथ ईस्टर्न कोलफिल्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर –495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अनुसूची

महामाया ओसीपी (सेंधोपारा–II ब्लाक), भटगांव क्षेत्र,

जिला– सुरजपुर (छत्तीसगढ़)

[रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/529, तारीख 24 अक्तूबर, 2019]

सभी अधिकारः

(क) राजस्व भूमि :

क्रम सं.	ग्राम का नाम	ग्राम संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	बरौधी	178	भैयाथान	सुरजपुर	51.940	भाग
2.	जरही	103	प्रतापपुर	सुरजपुर	67.460	भाग
3.	सेन्धोपारा	37	प्रतापपुर	सुरजपुर	17.220	भाग
4.	दुरती	39	प्रतापपुर	सुरजपुर	34.180	भाग
				कुल : 170.800 हेक्टर (लगभग) या 422.04 एकड़ (लगभग)		

(ख) आरक्षित वन भूमि :

क्रम सं.	कम्पार्टमेंट संख्या	रेंज	प्रभाग	क्षेत्र हेक्टर में	टिप्पणियां
1.	पी 1681	प्रतापपुर	सुरजपुर	12.386	भाग
			कुल : 12.386 हेक्टर (लगभग) या 30.61 एकड़ (लगभग)		

कुल (क+ख): 170.800+12.386 =183.186 हेक्टर (लगभग)
या 452.65 एकड़ (लगभग)

1. ग्राम बरौधी (भाग) में अर्जित किए जाने वाले प्लाट संख्याः 50(भाग), 51(भाग), 56(भाग), 58(भाग), 59(भाग), 60(भाग), 60/602, 61/603, 61(भाग), 62(भाग), 64(भाग), 65(भाग), 66(भाग), 67, 68(भाग), 69(भाग), 70, 71/2, 72(भाग), 87(भाग) से 89(भाग), 98/1(भाग), 105/600, 106 से 109, 110(भाग) से 113(भाग), 114, 118(भाग), से 121(भाग), 122/1 से 122/3, 123/1, 123/2(भाग), 124 से 134, 127/601, 135(भाग), 136 से 138, 139(भाग), 140/1, 140/2, 140/3(भाग), 141/2, 149, 210(भाग), 219, 220, 236 से 240, 244, 246 से 252, 256, 258, 259, 267 से 280, 281/1, 281/2, 282 से 284, 285/1, 285/2, 286, 287/1, 287/2, 288, 289, 290/1 से 290/4, 291 से 298, 299/1 से 299/10, 300 से 311, 312/1 से 312/3, 313, 314/1, 314/2, 315/1, 315/2, 316, 317, 318/1 से 318/3, 319, 320, 321/1, 321/2, 322 से 334, 335/1 से 335/5, 336 से 338, 339/1, 339/2, 340, 341/1, 341/2, 342/1 से 342/4, 343, 344(भाग), 346(भाग) से 349(भाग), 351/1(भाग) से 351/3(भाग), 352(भाग), 353/1 से 353/3, 354 से 358, 359(भाग), 360/1(भाग), 360/2(भाग).

2. ग्राम जरही (भाग) में अर्जित किए जाने वाले प्लाट संख्याः 2 से 26, 31, 32, 33(भाग), 34 से 36, 37/1, 59, 60, 61(भाग), 62(भाग), 63 से 65, 66(भाग), 105(भाग), 121(भाग), 175(भाग), 176 से 181, 182(भाग), 283(भाग), 287(भाग), 289(भाग), 290 से 295, 296(भाग), 297 से 340, 341(भाग), 342(भाग), 343, 344, 345(भाग), 346(भाग), 347 से 352, 353(भाग), 355(भाग), 362(भाग), 363(भाग), 364 से 459, 462 से 468, 469(भाग), 471(भाग), 472(भाग), 498(भाग), 499, 500(भाग), 502 से 506, 507(भाग), 508 से 510, 535(भाग), 538/1, 538/2, 539/1, 539/2, 540(भाग), 541(भाग), 549(भाग), 550(भाग), 551, 552(भाग), 553(भाग), 554, 555(भाग), 556(भाग), 558 से 563, 565, 566(भाग), 567 से 581, 582(भाग), 583(भाग), 584, 585(भाग), 586 से 588, 589(भाग), 590(भाग), 605(भाग) से 609(भाग), 790(भाग) से 793(भाग), 798(भाग), 799(भाग), 800 से 805.

3. ग्राम सेन्धोपारा (भाग) में अर्जित किए जाने वाले प्लाट संख्याः 3(भाग), 4(भाग), 5/1, 5/2, 6(भाग), 7 से 11, 12(भाग) से 14(भाग), 17(भाग), 26(भाग), 27 से 30, 31(भाग), 32, 33(भाग), 36(भाग), 56(भाग), 58(भाग), 61(भाग), 62/2, 63(भाग), 64 से 74, 75(भाग), 76(भाग), 78, 79(भाग), 80(भाग) से 84(भाग), 86(भाग) से 88(भाग), 89, 90(भाग) से 94(भाग), 95, 96(भाग), 97(भाग), 136/1(भाग).

4. ग्राम दुरती (भाग) में अर्जित किए जाने वाले प्लाट संख्याः 632(भाग), 650(भाग) से 653(भाग), 654, 655(भाग), 1055(भाग), 1056(भाग), 1160(भाग), 1164(भाग) से 1167(भाग), 1168 से 1172, 1173(भाग), 1174 से 1176, 1177(भाग) से 1179(भाग) 1183(भाग), 1184, 1185(भाग), 1199(भाग), 1200(भाग), 1229(भाग) से 1231(भाग), 1450(भाग) से 1457(भाग), 1458, 1459(भाग), 1460, 1461(भाग), 1462(भाग).

सीमा वर्णन :

ब्लाक –I:

क–ख–ग रेखा बिन्दु ''क'' से आरंभ होती है और ग्राम बरौधी के प्लाट संख्या 89, 88, 87, 61, 62, 64, 65, 66, 69, 71/2, 50/4, 50/5, 50/3, 50/2, 50/1, 68, 51, 60/10, 56/1, 60/8, 60/2, 58, 60/7, 113, 123/2, 121/2, 120, बिन्दु 'ख', 119, 118/9, 118/6, 135, 139, 142 से होकर 149 के दक्षिणी, पश्चिमी, उत्तरी और पूर्वी सीमा, 140/4 के उत्तरी, 210, 266 से होकर, 267, 250 के उत्तरी, 252, 256, 258, 259, 258, 236, 220, 219 के पश्चिमी सीमा, ग्राम बरौधी–जरही और जरही–कपसरा के भागतः सम्मिलित सीमा से होती हुई बिन्दु ''ग'' पर मिलती है।

ग–घ–ङ रेखा बिन्दु 'ग' से आरंभ होती है और ग्राम जरही के प्लाट संख्या 3, 4, 5, 7/1, 7/2, 24, 26/1, 26/2 के पूर्वी सीमा, 26/2, बिन्दु 'घ', 32, 31 के दक्षिणी, 60, 64, 65 के पूर्वी, 65 के दक्षिणी, 66, 62, 61, 33 से होकर, 37/1 के दक्षिणी, ग्राम बरौधी–जरही के भागतः सम्मिलित सीमा से होती हुई बिन्दु ''ङ'' पर मिलती है।

ङ–क रेखा बिन्दु 'ङ' से आरंभ होती है और ग्राम बरौधी के प्लाट संख्या 349, 348, 346, 344, 351, 352, 359, 360, 110, 111, 112, 98, 89 से होती हुई आरंभिक बिन्दु ''क'' पर मिलती है।

ब्लाक–II :

च–छ–ज रेखा बिन्दु 'च' से आरंभ होती है और ग्राम जरही के प्लाट संख्या 805 के पश्चिमी, 805, 121, 175, 182, 363, 362, 355, 353, 296 से होकर, 294, 290 के उत्तरी सीमा, बिन्दु 'छ', 289, 538, 540, 549, 550 से होकर वन कम्पार्टमेंट संख्या 1681, 606, 605, वन कम्पार्टमेंट संख्या 1681, 603, वन कम्पार्टमेंट संख्या 1681 से होती हुई बिन्दु ''ज'' पर मिलती है।

ज–झ रेखा बिन्दु 'ज' से आरंभ होती है और ग्राम दुरती के प्लाट संख्या 1456, 1455, 1459, 1454, 1451, 1452, 1453, 1454, 1461, 1462, 1457 से होती हुई बिन्दु ''झ'' पर मिलती है।

झ–ञ रेखा बिन्दु 'झ' से आरंभ होती है और ग्राम जरही के वन कम्पार्टमेंट संख्या 1681, प्लाट संख्या 603, वन कम्पार्टमेंट संख्या 1681, प्लाट संख्या 608, 609, 597, 552, 553 से होती हुई बिन्दु ''ञ'' पर मिलती है।

ञ–च रेखा बिन्दु 'ञ' से आरंभ होती है और ग्राम जरही के प्लाट संख्या 553, 597, 555, 556, 566 से होकर 563, 558 के उत्तरी, 558, 559, 560, 561, के पूर्वी, 561, 562 के दक्षिणी, 562, 565 के पश्चिमी, 590, 589, 583, 582, 507, 500, 498, 341, 342, 472, 346, 345, 472, 471 से होकर,

463, 459, 468 के पूर्वी, 799, 798, 793, 792, 791, 790, 805 से होती हुई आरंभिक बिन्दु ''च'' पर मिलती है।

ब्लाक – III :

ट–ठ रेखा बिन्दु 'ट' से आरंभ होती है और ग्राम सेन्धोपारा के प्लाट संख्या 3, 4/2, 5/1, 6, 36, 61, 58, 62, 63, 56, 75, 76, 81, 80/1, 80/2, 79/2 से होती हुई बिन्दु ''ठ'' पर मिलती है।

ठ–ड–ढ रेखा बिन्दु 'ठ' से आरंभ होती है और ग्राम दुरती के प्लाट संख्या 1055, 1056, 1165, 1164, 1166, 1167, 1173, 1177, 1178, 1179, 1183, 655, 653, 652, 632, बिन्दु 'ड', 651, 650, 1185, 1199, 1200, 1179, 1176, 1227, 1229, 1230, 1231 से होती हुई बिन्दु 'ढ' पर मिलती है।

ढ–ट रेखा बिन्दु 'ढ' से आरंभ होती है और ग्राम सेन्धोपारा के प्लाट संख्या 97/1, 96, 94, 93, 92, 91, 90, 88, 87, 86, 81, 82, 83, 84, 136/1 से होकर 71, 69, 66, 36, 32 के दक्षिणी सीमा, 31, 26, 8 से होकर 10, 11 के दक्षिणी सीमा, 17, 3 से होती हुई आरंभिक बिन्दु 'ट' पर मिलती है।

[फा. सं. 43015/21/2017–एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 10th December, 2019

S.O. 2141.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 762, dated the 9th May, 2019 issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act. 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 18th May, 2019, the Central Government gave notice of its intention to acquire 184.81 hectares (approximately) or 456.66 acres (approximately) land as all rights in or over such lands specified in the Schedule appended to that notification;

And whereas the competent authority in pursuance of section 8 of the said Act, has made his report to the Central Government;

And whereas, the Central Government after considering the aforesaid report and after consulting the Government of Chhattisgarh, is satisfied that the lands measuring 183.186 hectares (approximately) or 452.65 acres (approximately) with all rights in or over such lands as described in Schedule appended hereto, should be acquired;

Now therefore, in exercise of the powers conferred by sub -section (1) of section 9 of the said Act, the Central Government hereby declares that the land measuring 183.186 hectares (approximately) or 452.65 acres (approximately) with all rights in or over such lands as described in Schedule are hereby acquired.

The plan bearing number SECL/BSP/GM/(PLG)/LAND/ 529, dated the 24th October, 2019 of the area covered by this notification may be inspected in the Office of the Collector, District Surajpur (Chhattisgarh) or in the office of the Coal Controller, 1, Council House Street, Kolkata – 700001 or in the Office of the South Eastern Coalfield Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

SCHEDULE

Mahamaya OCP (Sendhopara-II Block)

Bhatgaon Area

District Surajpur (Chhattisgarh)

(Plan bearing number SECL/ BSP/ GM(PLG)/ LAND/ 529, dated the 24th October, 2019)

All Rights:

(A) Revenue Land:

Sl. No.	Name of village	Village number	Tahsil	District	Area in hectares	Remarks
1.	Barudhi	178	Bhaiyathan	Surajpur	51.940	Part
2.	Jarhi	103	Pratappur	Surajpur	67.460	Part
3.	Sendhopara	37	Pratappur	Surajpur	17.220	Part
4.	Durti	39	Pratappur	Surajpur	34.180	Part
Total :- 170.800 hectares (approximately) or 422.04 acres (approximately)						

(B) Reserve Forest Land:

Sl. No.	Compartment number	Range	Division	Area in hectares	Remarks
1.	P 1681	Pratappur	Surajpur	12.386	Part
Total :- 12.386 hectares (approximately) or 30.61 acres (approximately)					

Total (A+B)= 170.800+12.386 = 183.186 hectares (approximately)
or 452.65 acres (approximately)

1. Plot numbers acquired in village Barudhi (Part): 50(P), 51(P), 56(P), 58(P), 59(P), 60(P), 60/602, 61/603, 61(P), 62(P), 64(P), 65(P), 66(P), 67, 68(P), 69(P), 70, 71/2, 72(P), 87(P) to 89(P), 98/1(P), 105/600, 106 to 109, 110(P) to 113(P), 114, 118(P) to 121(P), 122/1 to 122/3, 123/1, 123/2(P), 124 to 134, 127/601, 135(P), 136 to 138, 139(P), 140/1, 140/2, 140/3(P), 141/2, 149, 210(P), 219, 220, 236 to 240, 244, 246 to 252, 256, 258, 259, 267 to 280, 281/1, 281/2, 282 to 284, 285/1, 285/2, 286, 287/1, 287/2, 288, 289, 290/1 to 290/4, 291 to 298, 299/1 to 299/10, 300 to 311, 312/1 to 312/3, 313, 314/1, 314/2, 315/1, 315/2, 316, 317, 318/1 to 318/3, 319, 320, 321/1, 321/2, 322 to 334, 335/1 to 335/5, 336 to 338, 339/1, 339/2, 340, 341/1, 341/2, 342/1 to 342/4, 343, 344(P), 346(P) to 349(P), 351/1(P) to 351/3(P), 352(P), 353/1 to 353/3, 354 to 358, 359(P), 360/1(P), 360/2(P) .

2. Plot numbers acquired in village Jarhi (Part): 2 to 26, 31, 32, 33(P), 34 to 36, 37/1, 59, 60, 61(P), 62(P), 63 to 65, 66(P), 105(P), 121(P), 175(P), 176 to 181, 182(P), 283(P), 287(P), 289(P), 290 to 295, 296(P), 297 to 340, 341(P), 342(P), 343, 344, 345(P), 346(P), 347 to 352, 353(P), 355(P), 362(P), 363(P), 364 to 459, 462 to 468, 469(P), 471(P), 472(P), 498(P), 499, 500(P), 502 to 506, 507(P), 508 to 510, 535(P), 538/1, 538/2, 539/1, 539/2, 540(P), 541(P), 549(P), 550(P), 551, 552(P), 553(P), 554, 555(P), 556(P), 558 to 563, 565, 566(P), 567 to 581, 582(P), 583(P), 584, 585(P), 586 to 588, 589(P), 590(P), 605(P) to 609(P), 790(P) to 793(P), 798(P), 799(P), 800 to 805.

3. Plot numbers acquired in village Sendhopara (Part): 3(P), 4(P), 5/1, 5/2, 6(P), 7 to 11, 12(P) to 14(P), 17(P), 26(P), 27 to 30, 31(P), 32, 33(P), 36(P), 56(P), 58(P), 61(P), 62/2, 63(P), 64 to 74, 75(P), 76(P), 78, 79(P), 80(P) to 84(P), 86(P) to 88(P), 89, 90(P) to 94(P), 95, 96(P), 97(P), 136/1(P).

4. Plot numbers acquired in village Durti (Part): 632(P), 650(P) to 653(P), 654, 655(P), 1055(P), 1056(P), 1160(P), 1164(P) to 1167(P), 1168 to 1172, 1173(P), 1174 to 1176, 1177(P) to 1179(P), 1183(P), 1184, 1185(P), 1199(P), 1200(P), 1229(P) to 1231(P), 1450(P) to 1457(P), 1458, 1459(P), 1460, 1461(P), 1462(P).

Boundary description:

Block – I :

A-B-C Line starts from point 'A' and passes in village Barudhi through plot numbers 89, 88, 87, 61, 62, 64, 65, 66, 69, 71/2, 50/4, 50/5, 50/3, 50/2, 50/1, 68, 51, 60/10, 56/1, 60/8, 60/2, 58, 60/7, 113, 123/2, 121/2, 120, point 'B', 119, 118/9, 118/6, 135, 139, 142, along southern, western, northern and eastern boundary of plot number 149, northern boundary of 140/4, through 210, 266, along northern boundary of 267, 250, western boundary of plot numbers 252, 256, 258, 259, 258, 236, 220, 219, along partly common boundary of villages Barudhi-Jarhi and Jarhi-Kapsara and meets at point 'C'.

C-D-E Line starts from point 'C' and passes in village Jarhi along eastern boundary of plot numbers 3, 4, 5, 7/1, 7/2, 24, 26/1, 26/2, along southern boundary of 26/2, point "D", 32, 31, along eastern boundary of 60, 64, 65, along southern boundary of 65, through 66, 62, 61, 33, along southern boundary of 37/1, along partly common boundary of villages Barudhi-Jarhi and meets at point 'E'.

E-A Line starts from point 'E' and passes in village Barudhi through plot numbers 349, 348, 346, 344, 351, 352, 359, 360, 110, 111, 112, 98, 89 and meets at starting point 'A'.

Block-II:

F-G-H Line starts from point 'F' and passes in village Jarhi along western boundary of plot number 805, through 805, 121, 175, 182, 363, 362, 355, 353, 296, along northern boundary of 294, 290, point "G", through 289, 538, 540, 549, 550, Forest compartment 1681, plot number 606, 605, Forest compartment 1681, 603, Forest compartment 1681 and meets at point 'H'.

H-I Line starts from point 'H' and passes in village Durti through plot numbers 1456, 1455, 1459, 1454, 1451, 1452, 1453, 1454, 1461, 1462, 1457 and meets at point 'I'.

I-J Line starts from point 'I' and passes in village Jarhi through Forest compartment 1681, plot number 603, Forest compartment 1681, plot number 608, 609, 597, 552, 553 and meets at point 'J'.

J-F Line starts from point 'J' and passes in village Jarhi through plot numbers 553, 597, 555, 556, 566, along northern boundary of 563, 558, eastern boundary of 558, 559, 560, 561, southern boundary of 561, 562, western boundary of 562, 565, through 590, 589, 583, 582, 507, 500, 498, 341, 342, 472, 346, 345, 472, 471, eastern boundary of 463, 459, 468, through 799, 798, 793, 792, 791, 790, 805 and meets at starting point 'F'.

Block-III:

K-L Line starts from point 'K' and passes in village Sendhopara through plot numbers 3, 4/2, 5/1, 6, 36, 61, 58, 62, 63, 56, 75, 76, 81, 80/1, 80/2, 79/2 and meets at point 'L'.

L-M-N Line starts from point 'L' and passes in village Durti through plot numbers 1055, 1056, 1165, 1164, 1166, 1167, 1173, 1177, 1178, 1179, 1183, 655, 653, 652, 632 , point "M", 651, 650, 1185, 1199, 1200, 1179, 1176, 1227, 1229, 1230, 1231 and meets at point 'N'.

N-K Line starts from point 'N' and passes in village Sendhopara through plot numbers 97/1, 96, 94, 93, 92, 91, 90, 88, 87, 86, 81, 82, 83, 84, 136/1, along southern boundary of plot numbers 71, 69, 66, 36, 32, through 31, 26, 8, along southern boundary of 10, 11, through 17, 3 and meets at starting point 'K'.

[F. No. 43015/ 21/ 2017-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 दिसम्बर, 2019

का.आ. 2142.—तेल उद्योग (विकास) अधिनियम 1974 (1974 का 47) की धारा (5) की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा श्री निरंजन कुमार सिंह, आईएफओएस (गुजरात:87) को सचिव (संयुक्त सचिव स्तर) के रूप में श्री दिवाकर नाथ मिश्रा, भा.प्र.से. (एएम:2000) के स्थान पर, वेतन मैट्रिक्स के लेवल 14 (रु.1,44,200-2,18,200/-) में वेतन के साथ 14.10.2021 तक सात वर्ष की संयुक्त अवधि के लिए या अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड (ओआईडीबी) में नियुक्त करती हैं।

[सं. जी-38011/32/2017-वित्त-I (पार्ट)]

पेरिन देवी, निदेशक (आईएफडी)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th December, 2019

S.O. 2142.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Niranjan Kumar Singh, IFoS (GJ:87) as Secretary (JS level), Oil Industry Development Board (OIDB) under the Ministry of Petroleum & Natural Gas with pay at Level 14 (Rs. 1,44,200-2,18,200/-) of Pay Matrix, for a combined tenure of seven years upto 14.10.2021 or until further orders, whichever is earlier, vice Shri Diwakar Nath Mishra, IAS (AM:2000).

[No. G-38011/32/2017-Fin. I (pt.)]

PERIN DEVI, Director (IFD)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 11 नवम्बर, 2019

का. आ. 2143.—लोक परिसर (अनाधिकृत कब्जाधारियों को बेदखल करना) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतदद्वारा नीचे दी गई तालिका के कॉलम (1) में उल्लिखित अधिकारी, जो भारत सरकार के राजपत्रित अधिकारी की रैंक के बराबर के अधिकारी हैं, को उक्त अधिनियम के प्रयोजनार्थ संपदा अधिकारी के रूप में नियुक्त करती है, जो उक्त तालिका के कॉलम (2) में विनिर्दिष्ट लोक परिसरों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा अथवा उसके तहत संपदा अधिकारियों को सौंपे गए कार्यों का निष्पादन करेंगे और प्रदत्त शक्तियों का प्रयोग करेंगे:—

तालिका	
अधिकारी का पदनाम	लोक परिसरों की श्रेणियां और अधिकार क्षेत्र की स्थानीय सीमाएं
(1)	**(2)**
रजिस्ट्रार, मौलाना आज़ाद राष्ट्रीय प्रौद्योगिकी संस्थान, भोपाल (मध्य प्रदेश)	मौलाना आज़ाद राष्ट्रीय प्रौद्योगिकी संस्थान, भोपाल (मध्य प्रदेश) से संबंधित और इसके प्रशासनिक नियंत्रणाधीन समस्त परिसर

[फा. सं. 3-9/2018-टीएस-III]

इन्द्रजीत कुरी, अवर सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 11th November, 2019

S.O. 2143.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the Table below being an officer equivalent to the rank of gazetted officer of the Government of India to be the Estate Officer for the purposes of the said Act who shall exercise the powers conferred and perform the duties imposed on estate officers by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in column (2) of the said Table:—

TABLE	
Designation of Officer	Categories of public premises and local limits of jurisdiction
(1)	**(2)**
Registrar, Maulana Azad National Institute of Technology, Bhopal (Madhya Pradesh)	All the premises belonging to and under the administrative control of the Maulana Azad National Institute of Technology, Bhopal (Madhya Pradesh)

[No. F. 3-9/2018-TS-III]

INDRAJIT KURI, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 01/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 4th December, 2019

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of South Western Railway and their workmen, received by the Central Government on 04.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22nd NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

I D No. 01/2017

I Party

Sh. Billa Shekar Babu,
H No. 240, Janata Quarters,
Kusugal Road,
HUBLI.

II Party

1) The General Manager,
South Western Railways,
Keshwapur, HUBBALLI – 580 023.

2) The Chief Workshop Manager,
South Western Railways, Railway Workshop, Gadag Road, HUBBALLI 580020.

Appearances :

I Party : None

II Party : Shri Ramesh Upadhyaya, Advocate

1. It is a petition filed by individual workman challenging his termination by the 2nd Party w.e.f. 09.07.2002. The Petition was filed on 25.03.2015, within a short span the office received the reference order from the Ministry under

Section 10(4)(A) of the ID Act in which the Management was called upon to justify their action of termination of the 1st Party workman herein from service.

2. Subsequently, on 09.08.2017 a Memo was filed by the 1st Party requesting to club this petition with C R No. 14/2015. Today, Sh. RU for the 2nd Party reported the settlement between the parties in C R 14/2015.

3. In that view of the matter, the Petition has become infructuous, since no industrial dispute in the nature of Section 2(k) of the ID Act survives to be adjudicated. Hence,

AWARD

Petition is Dismissed

(Dictated to U D C, transcribed by him, corrected and signed by me on 22nd November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 21/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/43/2010-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04.12.2019.

[No. L-12011/43/2010-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28Th NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 21/2011

I Party	**II Party**
The General Secretary, State Bank of Mysore Employees Association (R), No. 641, 22nd Main Road, 4th Block, Jayanagar, Bangalore - 560 041.	The Managing Director, State Bank of India, Head Office, K.G. Road, Bangalore - 560 009.

Appearance :

Advocate for I Party : Mr. N. Shiva Prasad

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No.L-12011/43/2010-IR(B-I) dated 25.05.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Sate Bank of Mysore, Region-II, Hassan in inflicting the penalty of reduction of pay by two stages with cumulative effect for four years on Shri. G. B. Ramachandra, Special Assistant, with effect from 18.01.2007, is legal and justified? To what relief the workman is entitled?"

1. The 1st party workman herein, is the employee of the 2nd Party / erstwhile State Bank of Mysore which on amalgamation is State Bank of India. The claim is, while working as Special Assistant at Tarikere Branch, he was issued charge sheet dated 22.08.2005 on certain allegations. Domestic Enquiry was initiated but the proceeding was defective, it was a colourable Enquiry. On the basis of untenable reason, the Enquiry Officer submitted his Report that the 1st party is guilty of charges alleged against him. On the basis of the said findings, the 2nd party No. 1 has imposed the punishment of bringing down his scale of pay by two stages with cumulative effect for a period of five years aggrieved by the same he preferred appeal before the 2nd Party No 2. The Appellate Authority modified the punishment by ordering reduction of scale of pay by two stages for a period of four years. The Enquiry Officer and the 2nd party had ignored that there was delay in filing the complaint; there was delay of two years from the date alleged misconduct to the date of issuing Charge Sheet. The complainant was not examined during the enquiry. He has not committed any offence as alleged. Because of the punishment order, he lost opportunity of promotion to the post of Officer in the Bank otherwise he would have been promoted in the year 2008. Since enquiry was pending, the 2nd Party refused to allow him to appear for the interview for promotion though he was called for interview in the year 2009. Vide Order dated 30.07.2010 he is permanently disqualified for promotion.

2. The 2nd Party contested the claim with the following counter, Proper Enquiry was conducted by the 2nd Party Bank in accordance with the principles of natural justice. Personal appearance of the Complainant is not required as per the Judgement of the Apex Court in the matter of State Bank of India vs Tanur Kumar Banerjee reported in AIR 2000 SC 3028. The Enquiry Officer after looking into the oral and documentary evidence has given reasons for holding that the charges against the 1st party are proved. The Disciplinary Authority as well as the Appellate Authority has considered all the valid points both in law and the facts of the case and imposed the punishment on him; there was no delay on the part of the 2nd Party in issuing Charge Sheet. The Investigation commenced as soon as the complaint was received. The misconduct committed by him is serious in nature; the punishment imposed is lenient and commensurates with the charges proved. Only in cases where punishment of discharge or dismissal is imposed, this Tribunal can interfere under Section 11-A of 'the Act'. The punishment imposed is a lesser one which is the administrative discretion of the Authorities and this Court cannot interfere and sit in Judgement as a Court of Appeal. The Action of the 2nd Party is fully justified.

3. On the rival contentions touching the validity of procedure of enquiry, a Preliminary Issue was framed, tried and adjudicated holding that the Domestic Enquiry held against the 1st Party by the 2nd Party is fair and proper.

The 1st Party workman thereafter adduced evidence stating that, the acts alleged against him does not amount to misconduct; he was never placed under suspension.

4. Both Parties have filed their arguments in writing.

5. The essence of the allegation in the Charge Sheet dated 22.08.2005 was, Firstly, while working as a computer operator, he wrote the name of the introducer Sh. Pavan Kumar who is also his own brother in law and customer of Branch; in account opening form of Sh. M.R. Satish Kumar Setty, SB A/C No. 01190016401 which was opened on 25.06.2004, he also affixed his signature as a witness. Sh. Pavan Kumar denies having affixed his signature as an introducer in the account opening form; the depositor has informed that he has not obtained the signature of Sh. Pavan Kumar in the Account opening form.

Secondly, a debit entry for Rs. 900/- was posted by him to the SB A/c of above customer in the system by his user ID-GBR on 25.06.2004. The customer denies having withdrawn the said amount from the said account; said voucher/ instrument is not available at the Branch.

6. At the commencement of enquiry, the documents produced by the Presenting Officer were taken on board and were marked as Ex M-1 to Ex M-11; the sole witness examined for the 2nd Party was their Assistant General Manager; he identified the documents already marked as Exhibits. Before commencing the evaluation of the Enquiry Report we have to start from the premise that, no Preliminary Investigation was conducted to investigate into the allegations by deploying an Investigating Officer; the statements of the complainants and witness were not recorded. The Bank witness never claimed his personal knowledge about the alleged charges. What emerges from the statement of Bank witness is, the CSE had written the name of the introducer Sh. Pavan Kumar Nayak. Admittedly, the account was opened on 25.06.2004 and the account holder made a compliant vide his letter marked during enquiry as BK Ex-06 dated 27.11.2004; the letter does not bear the inward number of the Bank. The 1st Party himself admits that, he had written the

name of the introducer Sh. Pavan Kumar Nayak since the column was blank but he points out to the responsibility of the Counter Clerk to verify and ensure filling up of all the columns in the account opening form before feeding the details to the computer. But being a Counter Clerk, it was not his duty to verify the signature of the introducer and the same has to be made by the competent Supervisory Official.

During this cross examination, the Bank witness did not rule out the possibility of the concerned supervisory Official being satisfied about the introducer's signature before authorising, opening of the account. The Supervisory Official who is always within the reach of the 2nd Party was not produced before the Enquiry Officer to depose in this regard. Two letters marked as Ex B-4 and Ex B-6 are also relied and acted upon by the Enquiry Officer; Ex B-4 dated 18.01.2005 is in the name of Sh. Pavan Kumar addressed to the Chief Manager stating that, he had introduced Sh. M.R. Satish Kumar Shetty in the year 2002 but he has not put his signature on the account opening form of the account on 25.06.2004 of said Mr. Satish Kumar Shetty. Both Ex BK-4 and Ex BK-6 do not bear the inward number of the Bank. Both letters appear to have been written in the presence of a common witness whose name and particulars are written illegibly. Neither of the above Sh. Pavan Kumar and Sh. M.R. Satish Kumar Shetty nor the common witness are brought to the enquiry. The 2nd Party cannot take a shelter under the umbrella that they need not examine the customer of the Bank in the light of the Judgement of the Apex Court; but proof of a fact differs from case to case. The question here being whether or not 1st Party had forged the signature of the introducer, without a strong circumstantial evidence, the Enquiry Officer erred in holding that the first charge proved.

With regard to the second charge, what emerges from the documentary proof is the CSE has posted a debit entry of Rs. 900/- to the savings Bank Account No. 01190014385 of Sh. M.R. Satish Kumar Shetty on 25.06.2004. As per the evidence of the witness the vouchers once posted by the Counter Clerk will pass through a Supervisory Official for passing and then to the payment Cashier for causing payment. The witness has admitted that, the said voucher is passed by a Supervisory Official on 25.06.2004 in respect of which there is entry in the passing Officials scroll under Sl. No. 24 Page 106 for Rs. 900/-; further same is sent for payment to the cashier; for receiving the said voucher in the payment scroll of the cashier there is entry under Sl. No. 42 Page 90 of 25.06.2004 and the amount of Rs. 900/- is paid to the holder of the token No. 101. On the said day there was no complaint about missing of the token hence, the transaction was complete in accordance with the procedure. The voucher being a withdrawal slip, the payment will be made only to an account holder not to any bearer of the instrument.

If really, there was any short circuit in the transaction that could not have happened single handedly by the CSE necessarily, it required complicity of some more Officials with him. He was not the custodian of the voucher once it passed on to the cashier. Mere marking of the compliant letters without proving the same by acceptable evidence would not carry the prosecution case anywhere. The Enquiry Officer has acted upon the undisputed and uncontroverted facts without taking the risk of analysing of the evidence emerging from the documents marked as Ex BK-1 to Ex BK-11. It is a cryptic finding without the support of reasoning's, hence arbitrary and perverse.

The order of the Disciplinary Authority is mechanical for not addressing the contentions raised submitted by the workman in his reply to the show cause notice. The findings does not flow from reasoned inferences, it is founded on sketchy evidence hence, perverse. Though, in the appeal memo the lapse in the Enquiry Report was pleaded categorically. The Appellant Authority without making a mention of the contentions raised, only records his observation that no fresh points have been brought up in the hearing. The punishment order of the Disciplinary Authority and the Appellant Authority cannot be sustained.

The workman not only suffered unjust punishment order, but also he is said to have been deprived of his promotion to the higher post. However, his prospectus to a higher post on promotion is not the issue before this Tribunal.

7. The 2nd Party among other things has questioned the jurisdiction of this Tribunal to interfere in the matter like this wherein, the punishment order is neither discharge nor dismissal but a minor punishment of withholding increment. It is contended that, Section 11A of 'the Act' will not enable this Tribunal to set aside or modify the minor punishment which is imposed on the proved facts. The judgement of our Hon'ble High Court reported in ILR 2011 Page 2037 in the matter of BMTC vs BMTC and State Transport Noukarara Sangha is relied. That was the case of a delinquent workman wherein, he was found guilty of the misconduct and imposed the punishment of withholding three increments with cumulative effect. On reference of the dispute to the Industrial Tribunal, he conceded the fairness of the Domestic Enquiry. The Tribunal held that, the enquiry report was well founded and the workman was guilty of contributory negligence. Still by looking to his past record reduced the punishment to, withholding two increments without cumulative effect. In the said circumstance, the Hon'ble High Court at Para 9 of its judgement observed thus;

"9. In the instant case, the punishment imposed on the workman for the proved misconduct being one, to withhold two annual increments with cumulative effect and not a case of dismissal or discharge, Section 11-A of the Act has no application. As already noticed, the Tribunal has not recorded any findings that, the findings recorded in the enquiry, on which the Disciplinary and Appellate Authorities acted as perverse".

Further, the lines from its previous judgement in the matter of The Managing Director, KSRTC, Bangalore vs J.B. Mahalingapa, Kolar (WP 15726/2001(L-KSRTC) were quoted as below

"Admittedly, Section 11-A of the I D Act is not available in a matter like this. Section 11A comes to picture only in the case of discharge or dismissal. The labour court has committed a serious error in the case on hand".

It is not as if without the enabling Section of 11-A of the ID Act a Labour Court becomes defunct. The power of the Labour Court even in the absence of Section 11-A is illustrated by the Apex Court in its judgement reported in AIR 1973 SC 1227 in the matter of WORKMEN OF TIRESTONE and RUBBER Co. of INDIA (Pvt) Ltd., vs the Management.

In the case on hand, the Enquiry Officer report is already held as perverse. Under Section 15 of 'the Act', where an Industrial Dispute is referred; it is the duty of the Labour Courts, Tribunals and National Tribunals to hold the proceeding expeditiously and submit the Award to the appropriate Government. The role of the Tribunal in an Industrial Adjudication like this is only to the extent of recording its finding to the referred issue. Hence, the Judgement of the Apex Court in the above matter does not come in the way of recording the finding on the legality and the justifiability on the action taken by the Management against the workman and also on the entitlement of the workman.

For the discussion supra, I hold that the action of the Management of SB region II, Hassan in inflecting the penalty of reduction of pay by 2 stages with cumulative effect for four years on the 1st Party workman Sh. G.B. Ramachandra, Special Assistant w.e.f 18.01.2007 is not legal and not justified.

AWARD

The reference is accepted

The punishment imposed by the 2nd Party on the 1st party workman Sh. G B Ramachandra, Special Assistant vide order of the Disciplinary Authority dated 18.01.2007 and the order of the Appellate Authority dated 28.11.2007 are set aside.

The 2nd Party is directed to restore his pay scale to the original stage from the date of the punishment order and release the consequential monetary benefit for which the workman was otherwise entitled for.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 40/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था।

[सं. एल-12012/27/2017-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramin Bank and their workmen, received by the Central Government on 04.12.2019.

[No. L-12012/27/2017-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22nd NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R No.40/2017

I Party	**II Party**
Sh. C Narayana Swamy, C/o P V Chinegowda, House No. 116, Near Govt. Primary School, ParapannaAgrahara, Electronic City Post, BENGALURU – 560 100.	The Chairman, Karnataka Gramin Bank, Head Office, P B No. 55, Gandhinagar, BELLARY – 583 103.

Appearances :

I Party : None

II Party : Sh. T P Muthanna, Advocate

1. The Government of India, Ministry of Labour vide order No. L-12012/27/2017-IR(B-I) dated 06.12.2017 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether the action of the Management of Pragathi Krishna Gramin Bank in terminating the services of C.Narayan Swamy w.e.f. 31.03.2020 is justified & legal? If not, what relief is the workman entitled to?"

2. On receipt of the reference order notice was issued to both parties. The Notice issued to the 1st Party workman returned unclaimed. 2nd Party is represented by their learned counsel and they have filed their statement stating that the 1st Party workman joined the service of erstwhile Kolar Gramin Bank as Messenger cum Sweeper, the said Bank amalgamated in Pragathi Gramin Bank vide notification of the Ministry of finance dated 12.09.2005, subsequently, the Pragathi Gramin Bank is renamed as Pragathi Krishna Gramin Bank in terms of notification dated 23.08.2013 of the Department of Financial Services, Ministry of Finance, Government of India, subsequently, Pragathi Krishna Gramin Bank amalgamated with Kaveri Gramin Bank to be called as Karnataka Gramin Bank we.f. 01.04.2019.

3. Further, it is stated the 1st Party was working as Messenger cum Sweeper at M Hosahalli Branch during the period 29.04.2005 to 13.01.2006, during his tenure he committed several acts of procedural and financial impropriety, thereby caused loss to the Bank, he committed acts of fraud and forgery prejudicial to the Bank, when the incident came to light, he was placed under suspension w.e.f. 21.08.2006 and a show cause notice calling for his explanation was issued. His explanation was not satisfactory and he was issued two charge sheets dated 29.09.2007, in No. HO:PGB:VC:CS:CNS-547:Compl.11:187:2007-08 and HO:PGB:VC:CS:CNS-547:Compl:25/33:192:2007-08. In the first charge sheet 15 charges were alleged and in the second, three charges were leveled against him. Departmental Enquiry was conducted, the Enquiry Officer conducted the enquiry separately in respect of both charge sheets, at the request of the 1st Party; enquiry proceedings were drawn in Kannada Language, he was given opportunity to defend against the Charges, he cross-examined the witnesses effectively, enquiry was held following the principles of natural justice. The Enquiry Officer on conclusion of enquiry in his Enquiry Report held him guilty of charges in respect of both Charge Sheets. The copy of the enquiry report was sent to the 1st Party calling upon his submissions to the findings of the enquiry officer. He submitted his remarks through his letters dated 14.12.2009 and 21.12.2009.

4. It is further stated that after due analysis of oral and documentary evidence, with the enquiry findings and also submission made by the 1st Party, the Disciplinary Authority considering the gravity of charges proved and proposed the punishment of dismissal in respect of both charge sheets individually; opportunity of personal hearing was provided to him to make his submission on the punishment proposed. Personal hearing was held on 01.03.2010 in respect of both charge sheets; 1st Party made his submissions both oral and written. After considering the gravity of misconduct including the submission of the 1st Party, the Disciplinary Authority imposed the penalty of dismissal vide order dated 31.03.2010.

5. It is further stated that 2nd Party filed a complaint against the 1st Party along with three others for misappropriation of funds to a tune of Rs. 31,000.00 at M Hoshalli Branch of the 2nd Party, at Kamasamudra Police Station and the case was registered for the offences u/s 408, 468, 471, 420 of IPC dated 12.02.2006. Charge Sheet was submitted to the Court in CC 223/2008 before the Magistrate, Bangarpet. He is acquitted of the charges from the Hon'ble Court. The punishment imposed on the workman is in confirmation with the gravity of the charges proved. The 1st Party challenged his dismissal order after the Appeal period contemplated by Read with Regulation 47 of Pragathi Gramin Bank (Officers and Employees) Service Regulations, 2005. He preferred appeal after almost seven years after his dismissal. The appeal is lodged by the 2nd Party and he is communicated of the above fact vide letter dated 19.03.2017.

6. The above pleading of the 2nd Party is supported with the documentary proof appreciating the facts brought on record that the action of the management of Pragathi Krishna Gramin Bank in terminating the services of Sh. C Narayana Swamy w.e.f. 31.03.2010 is justified and legal. The workman is not entitled for any relief under the award. Hence,

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 22nd November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 19/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था।

[सं. एल-41011/07/2018-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 04.12.2019.

[No. L-41011/07/2018– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15th NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R No.19/2018

I Party

The Secretary,
BharathiyaNazdoorSangha,
Felix Pai Bazaar,
MANGALORE – 575 001.

II Party

1. The Divisional Railway Manager (Mech), Southern Railway, Palakkad, KERALA – 678 010.

2. Sri Manikantan, Proprietor, M/s. Vasantham Agencies, 47/6, Niyafi Complex, Dennison Road, Nagarcoil, TAMILNADU – 629 001.

Appearances :

I Party : None

II Party No. 1 and 2 : None

1. The Government of India, Ministry of Labour vide order No. L-41011/07/2018-IR(B-I) dated 05.11.2018 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"a) Whether the action of the management of M/s. Vasantham Agencies, Contractor of Southern Railway, Mangalore in terminating the services of following workmen without following the provision of Sec. 25F of ID Act is legal and justified?

1. S.Smt. Sarojini 2. Suma, 3. Lucy D'souza, 4. Mabel D'souza, 5. Sreemathi, 6.Leela, 7.Salomena and 8. Shashikala

b) If not to what relief the workers are entitled and what directions are necessary in that respect?"

2. On receipt of the reference order, notice was issued to all the three concerned parties. 1st Party and 2nd Party No. 1 were served but they did not appear on the hearing dates. Notice issued to 2nd Party No. 2 has returned with the endorsement 'No Claimant'.

3. In the circumstance, it is inevitable to hold that the 2nd Party failed to justify their action. At the same time the 1st Party workmen since did not pursue the dispute espoused are not entitled for any relief.

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 15th November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था।

[सं. एल-41012/11/2015-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Bangalore as shown in the Annexure, in the industrial dispute between the management of South Western Railway and their workmen, received by the Central Government on 04.12.2019.

[No. L-41012/11/2015-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22nd NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R No. 14/2015

I Party	**II Party**
Sh. Shekhar Babu, H. No. 240, Janata Quarters, Kusugal Road, HUBLI.	The Chief Workshop Manager, South Western Railway, O/o Chief Workshop Manager, Personnel Branch, Carriage Repair Workshop, HUBLI – 580 020.

Appearances :

I Party : None

II Party : Sh. Ramesh Upadhyaya, Advocate

1. The Government of India, Ministry of Labour vide order No. L-41012/11/2015-IR(B-I) dated 15.04.2015 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether the termination of services of Sri Shekar Babu by the management of South Western Railway, Hubli is legal and justified? If not, to what relief the workman is entitled to?"

2. After the receipt of the reference order, both parties were notified, the 1st Party appeared through his learned counsel and sought to club the present case with the Petition filed by the Under Section 2(A)(2) of the Act seeking the very same relief of reinstatement. He has not filed claim statement in the present case. The 2nd Party is represented by their learned counsel Sh. RU.

3. Today Sh. RU submitted the Memorandum of Settlement arrived between the parties under Section 18(1) and Section 2(P) of the ID Act, 1947 read with Rule 58 (ID(Central) rules 1957). The contents of the settlement reads thus:

"WHEREAS, the I Party herein is an Ex-Helper in Mechanical Department of the II Party and had raised an Industrial Dispute against the II Party Management which is numbered as C R No. 14/2015 on the file of this Hon'ble Court.

WHEREAS, during the pendency of this case, the parties herein decided to settle the matter amicably by entering into a Settlement on the following terms and conditions:

Terms and Conditions:-

1. The I Party has agreed to get himself re-appointment in the service of the II Party as a freshener and has agreed to give up his previous service, if any.
2. The I Party has agreed to get pay from the date of reporting for duty.
3. The date of joining on re-appointment is considered for all purpose."

4. The Memorandum of Settlement is also accompanied with the Office Order No. 96/2019 dated 19.03.2019 issued by the Workshop Personnel Officer of the 2nd Party. Accordingly, the 1st Party workman who was working as Helper of Mechanical Department and who was removed from service, on his Application he is appointed as Temporary helper in Level – 1 (GP 1800/-) on pay of Rs. 18000.00 plus usual Allowances as admissible under existing rules.

5. The Affidavit of Sh. Mahesh Abbigere, Officiating under 2nd Party as Workshop Personnel Officer is also filed reiterating the re-appointment of the 1st Party workman. He has sought to close the proceedings.

6. In the absence of any thing to the contrary, I hold there is no Industrial Dispute as contemplated by Section 2 (k) of the ID Act ensuing between the parties. However, to answer the referred issued in the absence of any pleading, it is inevitable to hold that 2nd Party did not prove the legality of the termination of the 1st Party workman from his service.

However by their further action of re-appointing him they have set right the things and the workman is not entitled for any further relief. Hence,

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 22nd November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 प्राप्त हुआ था।

[सं. एल-12011/21/2013-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramin Bank and their workmen, received by the Central Government on 04.12.2019.

[No. L-12011/21/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22ND NOVEMBER 2019

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 39/2013

I Party

The Asst. General Secretary,
Pragathi Gramin Bank Officers Association,
No. 33/15, I Floor, III Cross,
Gandhi Nagar,
Bellary - 583103.

II Party

The Chairman,
Karnataka Gramin Bank,
Head Office,
Bellary - 583103.

Appearance

Advocate for I Party : Mr. R Nagendra Naik

Advocate for II Party : Mr. B C Prabakar

AWARD

The Central Government vide Order No. L-12011/21/2013-IR(B-I) dated 31.05.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the Government of India, Ministry of Finance can explore the possibility of amending the decision/ guidelines issued and to decide whether the demands raised by the Union are justified or not."

1. To epitomise the claim of the 1st Party union, as per the policy in vogue, the 2nd Party Bank was to recruit the Sub-staff through Employment Exchange depending on the exchange needs. Part time Messenger cum Sweepers were usually appointed on Part time basis and gradually they were made to work on regular basis; the daily wagers were empanelled in the order of their seniority and they are regularised in phased manner. The 2nd Party Bank is established by the Central Government under Regional Rural Banks, Act 1976. As per the Provisions of the Act 50% shares are held by Central Government, 35% held by the Sponsor Bank and 15% held by the State Government. On 12.09.2005, the government of India established Pragathi Gramin Bank by amalgamating Tungabhadra Gramin Bank, Chithradurga Gramin Bank, Kolar Gramin Bank and Sahyadri Gramin Bank vide extraordinary Gazette Notification dated 12.09.2005. On 23.08.2013 the Government of India established Pragathi Krishna Gramin Bank by amalgamating Pragathi Gramin Bank and Krishna Gramin Bank. The newly amalgamated entity i.e. Pragathi Krishna Gramin Bank is sponsored by Canara Bank.

It is further claimed that, until the year 2010 the service conditions of the employees of Pragathi Krishna Gramin Bank were governed by Pragathi Gramin Bank (Officers and Employees) Services Regulation 2005. In the same way the other Gramin Banks also had their own service regulations framed under Section 30 of the Regional Rural Banks' Act. As per Pargathi Gramin Bank (Officers and employees) Services Regulation 2010, Clerical Cadre is re-designated as Office Assistant (Multipurpose) in Group-B Employees. The Messenger cum Sweepers post is re-designated along with other workman cadre as Office Attendant (Multipurpose) in Group C Employees. Before the Conciliation Officer the 1st Party among others demands made a demand for regularisation / absorption of Part time / daily wage workers in RRBs.

2. Under the regulation framed by the Government of India in exercise of its powers conferred by section 30 of RRBs Act there is provision for appointment of temporary employees; the Chairman of the Bank on the instruction of the Board from time to time may engage persons in clerical or subordinate cadre, on ad hoc or temporary basis for a period of not exceeding 60 days in a year, to meet any exceptional circumstance, in consultation with the Sponsor Bank. In this regard, the Central Government has issued number of notifications empowering the Regional Rural Banks for appointment of Part time Messengers / Attendants / Sweepers from time to time.

It is further claimed, on the demand made by the Union 2nd Party has agreed to enhance the rate of wages payable to daily wagers; rate of wages is revised; every Branch shall have one post of daily wager / attendant / sweeper. The Thorat Committee appointed by the Central Government, has recommended categorisation of Branches has to be done every year, depending upon the business and needs. The Board of Gramin Bank will declare the number of vacancies in different cadres based on the categorisation of the branches and same will be sent to the sponsor Bank for the approval. For several decades there was no recruitment for the post of messenger except absorbing some daily wagers and two daily waged drivers during the year 2008. In the year 2013, 41 Office Attendants were recruited by drawing candidates from Employment Exchanges. For present more than 150 branches are functioning without regular messenger, around 60 clearing centre Branches and 40-50 big branches are without second regular messenger. They have engaged coolies for the work of Messengers; it is an unfair labour practice on their part. The coolies are paid on daily basis; they are not paid salaries on account. A debit slip will be signed by the Manager as per the guidelines issued to the Bank. Presently, more than 260 collies are working under this system. The Daily Wagers / Coolies / Substitutes are performing the duties of a regular Office Attendant; vide its letter dated 14.03.2011 the 2nd Party took the matter with its Sponsor Bank, requesting for relaxation in age and making reference to Employment Exchange in the case of Coolies while effecting Recruitment of Messenger cum Sweeper. Similar request was made once again on 05.07.2011.

3. It is further claimed that, in respect of the above request, the Canara Bank in its 18th RRB Co-ordination Committee meeting held on 27.08.2011 resolved in the matter of recruitment of relaxation of age and Education Qualification to the persons who are already working in RRB's. But the 2nd Party instead of regularising the coolies / part time employees who are working for more than a decade has resorted to recruit fresh candidates. To get the demand resolved, the 1st Party along with other Trade Unions functioning in the Bank and the Coolies have observed several agitation programs such as Relay Dharana before Head Office Bellary and one day strike and submitted Memorandum to the 2nd Party Bank. On the direction of the Apex Court, the Government of India had appointed a National Industrial Tribunal to examine the reference made by the Apex Court. The issue of Daily Wager / Coolies / Casual Labourers working in RRB's and their working conditions were referred to the National Industrial Tribunal. The Tribunal discussed in detail and passed Award to consider to these Coolies / Daily Wagers for regularisation in the post of Messengers. While implementing the Award of the National Industrial Tribunal, Bank regularised all Daily Wagers /

Coolies / Part Timers and Substitutes. But again, started engaging Coolies / Substitutes against sanctioned posts; the wages are paid to them by debiting in General Charges Account. All those coolies are qualified to hold the post as on the date of their enrolment. They have worked for more than 240 days in a year. Their appointments are legal and they are entitled for regularisation.

Vide letter dated 27.12.2012, the 2nd Party Bank had agreed to take the matter with Sponsor Bank for relaxation in age limit and Education Qualification conditions as agreed before the RLC (C) Bellary, but the right of the workmen cannot be curtailed by writing a new recruitment rule. The respondent is bound to regularise their services since, they have worked for more than 10 years in the sanctioned post. Vide its order dated 09.10.1984 the Government of India has stated to the effect that the daily wage workers presently working by the RRB's may be screened subject to their meeting the education qualification, the age group and the credit given to them for the period of service with the RRBs, they may be given appointments in the cadre of messenger etc. The sponsor Bank has also admitted that they have sent the letter to NABARD requesting relaxation of Age limit and Education Qualification in respect of Coolies working in the 2nd Party Bank. From 1994 the Coolies / Substitutes are working in the sanctioned posts. Already, the 2nd Party has contemplated for recruitment of 41 Office Attendant cadre post by making reference to Employment Exchange. In view of the same, the Coolies / Substitutes are facing threat of termination. Now they are age barred and cannot get employment anywhere to get their livelihood.

4. The counter of the 2nd Party to the claim is, they are required to follow Regional Rural Banks (Appointment and Promotions of Officers and Employees) Rules 2010 with regard to recruitment of Office Attendant (multipurpose) Group-C employees. At the end of March of each year they have to assess the total Manpower requirement in accordance with the guidelines of Manpower assessment and also based on the business position of each Branch of the Bank. They have permanent employees designated as Messenger cum Sweeper (Presently Office Attendant (multipurpose)) to do all the work of the Bank; no temporary employees are working with them. To meet the exigencies of work, they used to engage Coolies for doing menial works and paid daily wages, their engagement was intermittent but not regular; the charges are paid proportionately on the number of hours of work performed by the person engaged; for their engagement there is no condition of educational qualification or age limit. The names of the 1st Party persons are not sponsored by Employment Exchange or Authorised Agencies; they are not engaged against sanctioned post; they are not entitled to claim regularisation. The 1st Party union is the representative body of permanent officers; the members do not fall under the meaning defined under sec 2 (s) of the Industrial Dispute Act. The dispute is not legally and properly espoused. It has not been transformed into Industrial Dispute.

5. At this stage, it is to be noted that during the pendency of the proceedings, one of the concerned workmen namely Sh. Peersab has sent an application through post to exclude him and 210 coolies / casual workers from the list of workers submitted by the 1st Party Union. In the accompanying affidavit, among other things he alleges that the 1st Party Union is working for their members who are Officers and have not supported the cause of Coolies; the Coolies / Casual Workers have formed a separate Union in 2012 and himself and along with other coolie workers are the members of said daily wages worker union and placed the demand of regularisation of services of 211 Coolies / Casual Workman. The dispute is pending before this Tribunal in CR 22/2013 etc. The 1st Party Union was called upon to file their objection if any to the said application. In response Sh. RNN for the 1st Party Union submitted to the effect that, the 1st Party Association have No Objection to give up the claim of the Applicant Sh. Peersab S/o Shyamsab who is the workman at Sl. No. 115 at Ex W-49 and they will prosecute the case of the remaining workmen. In the light of the above, an order was passed calling upon the workman who do not intend to proceed with the present case, to file their respective affidavit. But none appeared in the coming hearing dates to withdraw their claim.

6. The 1st Party examined four witnesses and produced documents Ex W-1 to Ex W-52. The 2nd Party examined their Senior Manager I R Section and produced documents Ex M-1 to Ex M-9.

7. Both have advanced their argument.

8. WW-1 is the General Secretary of All Karnataka Gramin Bank Employees Federation to which 1st Party Association is affiliated; he is a retired Senior Manager of the 2nd Party Bank. He has narrated the persistent effort made by his Trade Union to achieve the regularisation of the service of the daily wagers ever since 1994 to 2009.

WW-2 and WW-3 are the concerned workmen and in their affidavit evidence they claim that they are performing the duties of the regular Sub Staff.

WW-4 is the General Secretary of the Krishna Gramin Bank Employees Union (R) which is a recognised Union and was a party during the conciliation proceedings held before the RLC (C), Bellary; he is the permanent employee of the 2nd Party, he has stated about the action taken by the 2nd Party with its sponsor Bank supporting the demand. As per his affidavit evidence, the 2nd Party had requested the Sponsor Bank / Canara Bank to relax the age limit and also in respect of reference from Employment Exchange. In the back drop of the fact that Coolies are engaged prior to

amalgamation, since the posts of Messenger cum Sweeper fell vacant on the death, retirements or termination, some such Coolies continued for quite some time hoping that they may be regularised at a later date, though they were not issued with appointment order or commitment letters. The witness had cited the settlement arrived between the Management of the Canara Bank and Canara Bank Employees Union in the matter of recruitment of House Keeper post by giving relaxation to qualification and age norms. According to him, the systems / procedure adopted by the Sponsor Bank are adopted in the 2nd Party; he has further stated that the 1st Party and other Trade Union functioning in the 2nd Party had served strike notice for resolving certain issues and demands, on that the General Manager, Lead Bank and Regional Rural Bank Wing, Regional Rural Bank Division, Canara Bank visited the 2nd Party Bank and discussed the issue and assured to see how best the issue can be resolved online with the recent settlement arrived in the Canara Bank. He has addressed a letter in this regard to the Canara Bank RRB Division.

By his further affidavit evidence, the witness / WW-4 brought on record that 2nd Party formed a Sub-Committee to look into the issue raised by the Trade Unions; the Sub-Committee vide its resolution dated 25.10.2016 devolved the procedure for engagement of daily wagers; the 2nd Party Bank issued guidelines in the matter of engaging these Coolies as Casual Workers vide circular 131/2016-17 dated 25.10.2016 (Ex W-48) given effect from 02.11.2016; they have published the list of vacancies available at various Branches (Ex W-49); accordingly they have empanelled 675 persons as Casual Workers, those workers have completed continuous service from the date of their empanelment with the payment of wages at the Minimum of the Pay Scale (at the lower grade in the regular Pay Scale) with applicable Dearness Allowance extended to the Regular Employee holding the same post; vide memo dated 07.09.2015 (Ex W-50), the number of vacancies under Office Attendant (Multipurpose) is declared as 421 on 31.03.2015 (based on categorisation of branches); bonus is paid for the accounting year 2017-18 to all the casual workers vide memo No. 77/2018-19 dated 01.08.2018 (Ex W-51); the 2nd Party has revised the payment of wages to these casual workers, in view of the revision of Dearness Allowance w.e.f 01.02.2019 vide Memo No. 176/2018-19 dated 02.02.2019 (Ex W-52).

The cross examination of WW-2 could not successfully destroy his examination in chief evidence, however the witness admits that there is no laid down procedure to appoint Casual Workers; the Management has agreed to streamline the Attendance, Application of Bonus, PF benefits etc to the casual employees.

9. MW1 has reiterated the case of the 2nd Party as pleaded in their counter statement. He maintained that, while engaging coolies to do menial works, the Branch Manager will not look into the educational qualification or their age and do not consider whether his name is sponsored through the employment exchange or not. Depending upon the availability in the local place, the Branch Manager engages a person on need basis for such work. *"……As per the guidelines issued by Government of India post of Messenger, Messenger cum Sweeper etc., has to be filled by the 2nd Party Bank against the sanctioned vacancies only from out of the candidates sponsored by employment exchange Sainik Board or other agencies catering to the welfare of SC / ST and no other candidate other than those said agencies can be appointed ….."* It is further averred by the witness in his affidavit evidence that, the 1st party Union is a representative body of permanent officers of the Bank *"…..The Coolies are not the workman of the 2nd Party and they cannot become members of the office Association. Further the byelaws of the Officers Association does not provide for the Coolies to become members of the Union…."* The dispute raised by the 1st party is therefore not maintainable in respect of the Coolies. Further the dispute is not legally and properly espoused by the 1st Party Association.

Further it is emphasised in the affidavit that, Krishna Gramin Bank got amalgamated with Pragathi Gramin Bank by notification dated 23.08.2013; the dispute was referred for adjudication vide order dated 31.05.2013 on which date Krishna Gramin Bank was separate entity and not a part of Pragathi Gramin Bank; it was sponsored by the State Bank of India.

During the cross examination he admits the suggestion that, the 2nd Party Bank has 636 Branches and there might be 317 vacancies as on today. They are posting the coolies from the Head Office to the vacant post of Office Attendants in all Branches.

10. From their own showing, the 1st Party has demonstrated that there is merit in the demand of the 1st Party Union in seeking relaxation of age limit and Education Qualification in respect of Coolies who are working continuously for more than a decade and to regularise their service in their existing vacant post. In fact, they themselves have sent a letter to the NABARD requesting relaxation of age limit and education qualification in respect of coolies working in the nd Party Bank; unfortunately, same was not considered.

11. Admittedly, number of the casual employees who are empanelled do not outnumber the permanent vacancies available with the 2nd Party. It is not only inhuman but also unconstitutional to say that the workmen who have rendered service for more than a decade as Daily Wagers / Casuals who have performed the work of permanent employees may be continued as temporary coolies. Whenever, regularisation of service is sought by temporary / casual workers to a public post, the trend is to project the Judgement of the Apex Court (Constitution Bench) in the matter of Secretary / State of Karnataka vs Umadevi (2006) 4 SCC 1 and to emphasise on the legal position enumerated therein that, such employees do not enjoy any right for permanent public employment *…temporary, contractual, casual, ad hoc or daily wage public*

employment must be deemed to be accepted by the employee concern fully knowing the nature of it and consequences flowing from it.... No direction can be issued to absorb, regularise or permanent continuation of temporary, casual, daily wage or ad hoc employees appointed or recruitment dehors the constitutional scheme of public employment.

However, in its further judgement reported in 2009 (8) SCC 556 in the matter of MSRTC and another vs Casteribe Rajya Parivahana Karmachari Sanghatana, upholding the Judgement of the Industrial Tribunal in directing the MSRTC to give the casual workers status, wages and all other benefits of permanency applicable to the post of trainers (which was confirmed by the Hon'ble High Court). The Apex Court observed thus,

> *"36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which the have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of the Schedule IV is established."*

In the same Judgement the Apex Court also considered the maintainability of the complaint filed by an unrecognised Union under Maharashtra Recognition Trade Union and prevention of unfair labour practices 1971 alleging unfair labour practice of the employer under item 6 of Schedule IV of the Act. While brushing aside the maintainability issue observed thus,

> *"58. In what we have held above, the affected employees in the two complaints filed by the unrecognised Union may not be entitled to the benefits of permanency to the post of cleaners as these complaints are not maintainable. But in the present fat situation, in out judgement, it would be a travesty of justice if at this stage because of non-maintainability of the complaints at the instance of the unrecognised Union, these employees are deprived of the benefits of status, wages and permanency applicable to the post of cleaner when similarly situated employees who had filed the complaints individually would get benefits of permanency applicable to the post of cleaners."*

In the present case also the legality of the espousal of the dispute is one of the grounds of attack on the claim. But nothing is shown that the Union whose members are all above the workman cadre cannot espouse an Industrial Dispute on behalf of the temporary / coolies who have served for their Employer / Management.

Further in another Judgement reported in (2015) 5SCC786 in the matter of Durgapur Casual Workers Union vs FCI and others the larger Bench of the Apex Court cited its earlier Judgement at Para 21 as follows,

> ***"21**. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi (3) in the grant of relief was considered by this Court in Ajaypal Singh v. Haryana Warehousing Corporation in Civil Appeal No.6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows:*
>
> *"20.The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.*
>
> *21. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees.*
>
> *22. Section 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.*
>
> *If any part of the provisions of Section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.*

23. Section 25H of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

24. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of re-employment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

25. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

26. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal.""

Further it was held "*having accepted that there was unfair Trade practice, it was not open to the Bench of the High Court to interfere with the impugned Award*".

Yet in another Judgement reported in (2014) 7 SCC 190 in matter of Harinandan Parsad and others vs Employer I/R to Management of Food Corporation of India and another while endorsing the award of the tribunal in granting the relief of reinstatement, it was observed thus,

"34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art.14 of the Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

36. In the language of Krishna Iyer, J:

"The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide for the mechanics of dispute- resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counter-productive battles and the assurance of industrial justice may create a climate of goodwill." (Life Insurance Corpn. Of India v. D.J.Bahadur 1980 Lab IC 1218, 1226(SC), per Krishna Iyer,J.)."

In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of Industrial Disputes Act, in one of its first and celebrated judgment in the case of Bharat Bank Ltd. V. Employees of Bharat Bank Ltd. [1950] LLJ 921,948-49 (SC) this aspect was highlighted by the Court observing as under:

> *"In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."*

37. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in the case of New Maneckchowk Spinning & Weaving Co.Ltd.v. Textile Labour Association [1961] 1 LLJ 521,526 (SC) in the following words

> *"This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to the matter as laid down by the legislature or by this Court."*

38. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.

39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker / ad hoc / temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

12. The Government has sought an answer about the justifiability of their demand for their regularization but has not sought any enforceable relief. Once the demands are found to be justified it is the propriety of the Government, Ministry of Finance to explore the possibility of amending its earlier policy decision, guidelines. The contention taken by the 2nd Party that the 1st Party workmen are only appointed on need basis to do a particular job and did not serve continuously etc., is washed away by their own action of empanelment and streamlining their service condition.

13. The referred issue does not spell out the nature of demands raised by the Union before the Conciliation Officer, the conciliation records would speak that, they had raised the Industrial Dispute on the following demands:

i) Parity of Pension

ii) Formation of National Rural Bank of India.

iii) Regularisation / absorption of part-time / daily waged workers in RRBs.

iv) Withdrawal of Government Order on deputation, HR policy to reduce the staff strength.

v) Representation of Workman and Officer in the Board of Management.

14. However now the 1st Party has given up the four demands by way of a memo dated 22.08.2019 which reads as under :

> *"It is submitted that though initially there were five demands raised in Ex W-16, what remains for consideration is demand (iii) regarding regulation of Part-time/ Daily Waged employees. The first Party is not pressing other demands. Hence, dispute may kindly be considered in respect of Regulation."*

15. In view of the above the definite answer to the referred issue is, the demand of the 1st Party for regularisation / absorption of Part-time / Daily Wage workers in RRBs is justified.

AWARD

The reference is accepted

The demand raised by the 1st Party Union seeking regularisation / absorption of part time / daily wage workers in RRBs is genuine and justified.

The Government of India, Ministry of Finance can explore the possibility of amending any earlier decisions/ guidelines which interrupt the passage of implementation of above demand.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 22nd November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का. आ. 2150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 51/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.12.2019 को प्राप्त हुआ था

[सं. एल-12012/180/2006-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 4th December, 2019

S.O. 2150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04.12.2019.

[No. L-12012/180/2006-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH NOVEMBER 2019

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 51/2007

I Party

The President,
Mysore Division General Employees Association,
Room No.3, 1st Floor,
Pai Complex,
Chandraguptha Road,
Behind Santhosh Hotel,
Mysore - 570 691.

II Party

The General Manager,
State Bank Of India,
Head Office,
K.G. Road,
BANGALORE - 560 009.

Appearance:

Advocate for I Party : Mr. B D Kuttappa

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/180/2006-IR(B-I) dated 07.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of management of State Bank of Mysore in imposing the punishment of dismissal from the services on Shri C. Krishna Murthy, Ex-Daftary, State Bank of Mysore, J.S.S. College Branch, Mysore w.e.f. 05.09.1996 is legal and justified? If not, to what relief the workman is entitled and from which date?"

1. The 1st Party union has espoused the cause of the former employee of the 2nd Party, previously State Bank of Mysore after amalgamation presently State Bank of India.

The claim is,

1st Party workman joined the service in year 1983 as Peon in the Ponnampet Branch of the 2nd Party. At the time of his dismissal from service he was working as Daftary at J.S.S College Branch Mysore. He was kept under suspension w.e.f 26.03.1991 which was followed by a charge sheet dated 27.04.1992. His denied the charges levelled against him; the 2nd Party initiated Domestic Enquiry by appointing Enquiry Officer and Presenting Officer; the Enquiry Officer without following the rules of natural Justice and without giving opportunity to the workman concluded the Enquiry and submitted his finding. On the similar charges Criminal Complaint was filed against him. The charges in the Departmental Enquiry and Criminal Case are identical; he is acquitted from the criminal charges vide Order dated 12.03.1997. Hence the entire proceeding initiated against him is vitiated. The enquiry report was not served on him. The order of dismissal passed against him on 29.08.1996 is liable to be set aside: His Appeal against the order of the Disciplinary Authority is not considered; He is unemployed and unable to maintain himself and his family.

2. The 2nd Party in their counter statement would contend,

the enquiry was conducted in consonance with the Provision of Bipartite Settlement on Principle of Natural Justice. The Enquiry finding was, Charge No. 1 and 2 are proved and Charge No. 3 partially proved; show cause notice with Enquiry Report was marked to him. The Kannada version of the Enquiry finding was also served on him. He failed to submit his reply. He has committed serious acts of misappropriation and fabrication of documents. The charges levelled against him in the Criminal Case and the Disciplinary proceedings are entirely different. The charges alleged and proved against him is in the nature of theft, breach of trust and dishonesty; the punishment order of dismissal imposed on him is based on definite finding of the Enquiry Officer and justified.

3. On the rival pleadings taken by both parties on the validity of the Domestic Enquiry the Preliminary Issue was raised tried and adjudicated by upholding the Domestic Enquiry has fair and proper.

4. Thereafter the 1st Party workman adduced evidence stating that he is unemployed since his removal from service in the year 1996.

5. Both learned advocates have advanced arguments.

6. As per the charge sheet dated 27.04.1982 he was alleged of 2 charges

Firstly, he surreptitiously removed a draft leaf bearing No. TT/82/039276 from the draft book of Krishnamurthypuram Branch and unauthorisedly wrote the draft for Rs. 7,000/- mentioning the date as 19.05.1990 in favour of Smt. H Suma drawn on T Narasipur Branch of the 2nd Party Bank without the Bank receiving any consideration. The signature of the drawing officials differs with the specimen available on record; the draft is encashed at T Narasipur Branch on 21.05.1990.

Secondly he surreptitiously removed draft bearing No. OL/83/358945 from the draft book and wrote the draft for Rs. 24,000/- mentioning the date as 21.07.1990 in favour of Smt. Bhagyamma drawn on A.D.B, Sugar Town, Mandya of the 2nd Party without Bank receiving any consideration. The signature of the drawing officials differs with the specimen available on record; the draft was encashed at the A.D.B, Sugar Town, Mandya through the Savings Bank Account of Smt. Bhagyamma maintained at Guthalu Branch, Mandya.

Thirdly, he raised a loan Rs. 10,728/- from M/s. Manipal Finance Corporation, Mysore on 13.11.1990 for purchase of Videocon T.V without obtaining permission from the 2nd Party; he surreptitiously removed a cheque book bearing No. 426961-426970 of Krishnamurthypuram Branch, Mysore of 2nd Party, issued the cheques to the Manipal Finance Corporation giving the Account No. 5087 of Dr. J M Raman; the cheque bearing No. 426964 issued in favour of Manipal Finance Corporation was returned unpaid.

On 02.07.1992 he was issued modified charge sheet with Kannada Version. The workman denied the allegations.

7. At this stage it is worth recalling that during the trial held on the Preliminary Issue the 2nd Party had produced the Enquiry Report as Ex M-10 but without the proceedings of Enquiry along with documents marked during the Enquiry; submission was made at the Bar that the Enquiry records could not be traced despite thorough search. However, drawing inference from the Enquiry Report and since the workman had not submitted his remarks to the Enquiry Report, I had recorded my finding to the effect that the Enquiry proceeding was held without violating the principles of Natural Justice. It was also noted in the order dated 16.07.2019 that "… *the question of perversity of Enquiry Report has to be considered at the stage of considering the merits of the case which requires scrutiny of the evidence adduced during the Enquiry proceedings. It is a legal contention which needs to be kept open for the 1st Party to urge while addressing arguments on merits of the case*.

8. Now time has come to record a finding on the referred issue. The Enquiry records are incomplete without the evidence adduced by the parties and also without the record of proceedings of the hearing date. That being the position I am disabled to assess the merits of the Enquiry Report. It is an Industrial Adjudication and the 1st Party workman who is at the receiving end naturally gets the benefits of the lapses on the part of the 2nd Party. For the failure of the 2nd Party in not placing before this Tribunal the oral evidence adduced, documents exhibited and the proceedings drawn on each hearing date, it is inevitable for me to record that the 2nd Party failed to justify their action in imposing the punishment of dismissal from service of the 1st Party workman.

9. While moulding relief, it also cannot be lost sight of that in respect of the punishment order of September 1996 he raised the dispute after a delay of 10 years. He has not assigned any reason for the undue delay. The elaborate delay on his part in raising the dispute probably occasioned in disappearance of part of the Enquiry records. Sh. RU for the 2nd Party has strong objection, against the claim both on the ground of delay and also for the reason that the workman had accepted the punishment order and did not choose to prefer the appeal.

Keeping in view above all facts, I hold, he is entitled to be treated as in service from the date of the punishment order till the date of his superannuation and 50% of the back wages.

AWARD

The reference is accepted

The action of the 2nd Party in imposing the punishment of dismissal from service on Sh. Krishna Murthy Ex-Daftary who was working at J.S.S College Branch, Mysore w.e.f 05.09.1996 is not legal and not justified. The workman shall be treated as on duty from the date of his dismal till the date of his superannuation and shall be paid 50% of the back wages.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2151.—औद्यौगिक विवाद अधिनियम, 1947 (1947 का 33ए) की धारा 15 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 01/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-22013/01/2019-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2151.—In pursuance of Section 15 of the Industrial Disputes Act, 1947 (33A of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Kolkata, as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 06.12.2019.

[No. L-22013/01/2019-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Misc. Application No. 01 of 2015

U/S. 33A of the I.D. Act, 1947
(Arising out of Reference No. 92 OF 1980)

Parties : The General Secretary,
Food Corporation of India Handling Workers' Union,
Regd. Office at 8654 Arakashan Road, Paharganj,
New Delhi – 110005 …Applicant

Vs.

1. The General Manager (Region),
Food Corporation of India, Regional Office,
6, Royed Streed, Kolkata – 700016.

2 . The Area Manager,
District Office, MJN Road,
Coochbehar, West Bengal,
Pin – 7362101. …Opp. Parties

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : None

On behalf of the Opp. Party : Mr. Alok Banerjee, Ld. Counsel with Mr. Uttam Kumar Mondal, Ld. Counsel.

State: West Bengal. Industry: Food & Supplies

Dated: 14th November, 2019

AWARD

This is an application under Section 33A of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947 for convenience) filed by the Applicant for setting aside order dated 6th May, 2015 passed in violation of bipartite settlement held on 24th September, 1997 and also passed without prior permission of the Tribunal.

2. Brief facts in the background of which this application has come up for hearing are that Food Corporation of India used to engage workers through contractors for handling of procurement work, storage, preservation of food grains etc. In order to stop the malpractice and functioning of working system as well as to improve the functioning, bipartite settlement was entered into between the management of FCI and the recognized union of FCI on 24th September, 1997 for formation of gangs. In compliance of above settlement the District Manager, Coochbehar issued office order dated 26.09.1997 for forming gangs and thereby promoting 11 handling labours as Sardar and Mondal in respective gangs. A dispute arose after submission of gang list at Coochbehar resulting stoppage of work of FCI. Therefore, a meeting was held between Senior Regional Manager of FCI, Coochbehar and the representative of the workers union on 17.12.1997 and accordingly decision was also taken, but on 1st of February, 1998 it was found in attendance register that out of the said promoted 11 workers, name of 10 workers were recorded in the attendance register as handling labour and name of one person was mentioned as ancillary labour which amounted to demotion of those workers and is a major penalty punishment without any disciplinary proceeding. Therefore, an industrial dispute was raised before the management and the matter was referred to the Central Government after failure of conciliation proceeding. The Central Government referred the above dispute to the Tribunal in following words:

> *"Whether the action of the management of Food Corporation of India in respect of its West Bengal Region, Kolkata in dismantling the gangs formed vide order dated 20.09.1997 and thereby demoting 11 workmen (as per listenclosed) from the post of Sardar and Mondal to the handling workers w.e.f. 01.02.1998 is legal and justified? To what relief concerned workmen are entitled to?"*

During pendency of above reference the management of FCI is alleged to have passed an order on 6th May, 2015 in utter violation of Section 33 of the Industrial Disputes Act, 1947regarding promotion of four workers, namely, Gabinda Roy, Satyan Roy, Kamal Roy and Rajendra Roy as Sardar by depriving right of earlier promoted 11 workers.

Thus the union representing 11 workers has moved this application for setting aside the promotion order dated 06.05.2015.

3. Food Corporation of India has filed its written objection pleading therein that the provisions of Section 33 of the Act of 1947 are not violated. There is no change in service condition. The 11 workers were drawing wages available to them as Sardar and Mondal forcefully which is clearly reflected from the letter dated 6th January, 1998. It is further pleaded that office order dated 6th May, 2015 is not related or connected with the dispute which is pending before this Tribunal. By issuance of the said order service condition of 11 workmen were not changed or altered during pendency of the dispute. The promotion order is not given effect to till date as per direction of the Labour Commissioner.

4. Despite giving sufficient opportunity to the parties, they have failed to adduce any evidence to substantiate their respective claims. In the circumstances, the application is decided on the basis of pleadings of the parties and relevant provisions of the Act of 1947.

5. It is not disputed between the parties that bipartite settlement had taken place between the management of FCI and the representatives of the union where both agreed with regard to formation of gang. However, the management has disputed the promotion of 11 workers as Sardar and Mondal as alleged by the Applicant union. Now the question arises whether for promotion of workmen as Sardar and Mondal during pendency of reference, any permission or approval of the Tribunal is required and the same is bad for not obtaining it. Section 33 of the Act of 1947 says that during pendency of proceeding before the Labour Court or Tribunal the employer shall not alter the conditions of service applicable to the workmen in regard to any matter connected with the dispute, except with the expression in writing of the authority before which the proceeding is pending. The terms and conditions decided in bipartite settlement between the management and the representatives of the union are the conditions of service. It is material to note here that the bipartite settlement dated 24th September, 1997 was only with regard to formation of gang. Promotion of any workman to a particular post in preference to other cannot be said to be condition of service. It is true that formation or dismantling of the gang are the matters related to the pending reference, but where 11 workers are not promoted, the same cannot be said to have changed the condition of service, specially when the management has denied that these 11 workmen were ever promoted as Sardar or Mondal. No evidence has been adduced by the Applicant to show that they have been promoted by the management of FCI as Sardar and Mondal and thereafter demoted during pendency of reference.

6. Hence, I find no substance in the application of the Applicant union. Therefore, the application under Section 33A of the Act of 1947 is dismissed.

Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 14th November, 2019

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 02/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-22011/15/2017-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2018*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Kolkata, as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 06.12.2019.

[No. L-22011/15/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 02 of 2018

Parties: Employers in relation to the management of Food Corporation of India, Regional Office

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Aloke Banerjee, learned counsel with Mr. Uttam Kumar Mondal, learned counsel.

On behalf of the : Mr. Tridib Chakraborty, learned counsel

State: West Bengal. Industry: Food & Public Distribution

Dated: 18th November, 2019.

AWARD

By Order No.L-22011/15/2017-IR(CM-II) dated 26.09.2017 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the General Manager, FCI, Regional Office, Kolkata by denying to issue Notice of change u/s 9A of I.D. Act, 1947 for deploying Contract Labour in place of Direct payment system (DPS) workers at Railway siding, New Coochbehar, to the concerned workers/union is legal and/or justified? If not, what relief the workers are entitled to?"

2. When the case was taken for hearing, learned counsel both the parties were present. Learned counsel for the union submitted that the union does not want to pursue the reference and to file statement of claim. Learned counsel for the management submitted that in the absence of statement of claim of the union, management has nothing to answer by filing written statement. Both the parties have prayed that the reference may be disposed by passing appropriate order.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of the issue as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 18th November, 2019

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2153.—औद्यौगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फरक्का बैराज परियोजना के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 10/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-42012/1/2003-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Kolkata, as shown in the Annexure, in the industrial dispute between the management of Farakka Barrage Project and their workmen, received by the Central Government on 06.12.2019.

[No. L-42012/1/2003-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 10 of 2004

Parties: Employers in relation to the management of Farakka Barrage Project

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal. Industry: Farakka Barrage

Dated: 26th November, 2019

AWARD

By Order No.L-42012/1/2003-IR(CM-II) dated 22.03.2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

> *"1. Whether the action of the management of Farakka Barrage Project Authority by not regularizing the services of 217 boatmen (list enclosed) is legal and justified? If not, to what relief the concerned workmen are entitled?"*

2. As per statement of claim the workmen under reference were engaged under the management of Farakka Barrage Project on different dates in the year 1976 and were posted at different ferry services ghats in Jangipur Barrage Division. They have been working continuously and doing perennial nature of jobs of operating ferry boats under the said Jangipur Barrage Division of Farakka Barrage Project, but the management with a *mala fide* motive to deprive the concerned workmen of regular scale of pay introduced broker/contractor to distribute wages to the concerned workmen, though they are doing the job of barrage authority and the barrage authority controls and supervises their work. The management loosely called them contractor labour though there prevails no genuine contract labour system as the Farakka Barrage Project has not obtained registration from the appropriate authority as required under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor also has not obtained any license under Section 12 of the said Act. Therefore, the contract system was a camouflage and a sham one and the concerned workmen are in fact employees of Farakka Barrage Project. They are entitled for regularization in view of settled proposition of law laid down by the Hon'ble Supreme Court in the case of Secretary, Hariyana State Electricity Board v. Suresh and Others, 1999-I-LLJ 1086. It is also mentioned in the statement of claim that there is a set of workmen working as boatmen ferrymen who are under direct payment system of the barrage authority and they get regular scale of pay, but the concerned workmen doing similar nature of job get a paltry amount which amounts to exploitation of human labour and unfair labour practice. Farakka Barrage Project authority directly maintains and operates 8 number of free ferry services ghats in various location across feeder canal and lock channel under the supervision of Executive Engineer. Had there been any genuine contractor, the management would disclosed the name of contractor.

3. In reply to union's statement of claim, the management of Farakka Barrage Project had filed its written statement denying the averments made by the union and pleaded inter alia that there is no relation of master and servant between the management and the concerned workmen. The alleged claim of the workmen does not come within the definition of Industrial Disputes Act, 1947. The Farakka Barrage Project did not engage any boatman for operation of ferry services at different locations over the feeder canal. The contractors in different locations of ferry ghat used to engage boatmen directly for operating free ferry services and they themselves paid to the boatmen employed by them directly. It is further pleaded that Farakka Barrage Project is registered with the Ministry of Labour vide registration No. 46/R(6)/80 ALC dated 20th July, 1981 and annual return of principal employer year ending December every year is regularly submitted to the Regional Labour Commissioner (Central), Kolkata. So the question of obtaining license by Farakka Barrage Project does not arise. It is the sole responsibility of the working contractor of different ferry ghats to get license from the appropriate authority. Boatmen are not at all engaged by the department for operation of free ferry services and their claim in this behalf is baseless and motivated. It is further stated that in order to maintain status quo for traffic communication, the District Magistrate, Murshidabad proposed nine number of free ferry services which have to be introduced at different locations of feeder canal. Accordingly nine number of free ferry services have been introduced at different locations and still continuing till links are restored by the road bridge on contract basis which include men and material to be deployed by the contractor as such contractor has the sole responsibility. The contractors are engaged

as per CPWD/FBP account procedure. In doing so a wide publication is made through Assistant Media Executive, Director of Advertising and Publication, New Delhi who published the notice inviting tender in at least three number of leading daily newspapers. The work was allotted to the lowest rate quoted by the contractor for a year in agreement with terms and conditions and specification. Farakka Barrage authority awarded the work to the different contractors for operating free ferry services in different locations and boatmen/majhis were engaged by the contractors. Hence Farakka Barrage Project has no liability in respect of regularization of the services of the workmen concerned.

4. A rejoinder was also filed by the union reiterating the averments made in the statement of claim.

5. On behalf of the union WW-01, Md. Hanif Shaikh and on behalf of the management MW-01, Shri Tarani Ranjan Mondal and MW-02, Shri Somendra Nath Roy have been examined. Apart from this, several documentary evidences have also been filed by both the parties which shall be taken at appropriate place.

6. As none of the parties appeared despite giving sufficient notice to them, their argument could not be heard. Hence on the basis of evidence, oral as well as documentary available on record, adjudication of dispute under reference is proceeded with.

7. Basic question which arises in the present case are (1) whether there exists relationship of employer and employee between the Farakka Barrage Project and the concerned workmen and (2) whether the alleged contract is a sham one created to camouflage the relationship.

8. The guiding principle to determine the relationship of employer and employee has been given by the Hon'ble Supreme Court in **Balwant Rai Saluja & Anr.** V. **Air India & Ors.**, 2014 (9) SCALE 567 = CDJ 2014 SC 694 while determining the relationship of employer and employee has held as follows:

> *"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (1) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."*

9. The aspect of relationship of employer – employee is a pure question fact and initial burden is on the person who claims the existence of employer – employee relationship. The aspect of burden of proof has been elaborately dealt with by Hon'ble the Apex Court in **Nilgiri Cooperative Marketing Society Limited** v. **State of Tamilnadu and Ors.**, JT 2004 (2) SC 51 wherein it has been held that

> *"47. It is well settled principle of law that the person who sets up a plea of existence of employer employee relationship, the burden would be upon him.*
>
> *48. In N.C. Jhon vs. Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union & Ors. (1973 Lab. I.C. 398) the Kerala High Court held –*
>
> *"The burden of proof being on the workmen to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to be produce books of account they would have proved employer employee relation."*
>
> *49. In Swapan Dasgupta and Ors. vs. The First Labour Court of West Bengal and Ors. (1976 Lab. I.C. 202) it has been held –*
>
> *"where a person asserts that he was a workman of the Company and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other persons."*
>
> *50. The question is whether the relationship between the parties is one of the employer and employee is a pure question of fact……"*

10. The aspect of relationship of employer and employee is purely a factual question and the initial burden lies on the person who claims existence of employer – employee relationship. The Hon'ble Supreme Court in **Bank of Baroda** v. **Ghemarbhai Harjibhai Rabari**, 2005 (3) SCALE 353 has observed –

> *"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The degree of such proof so required vary from case to case."*

11. In order to discharge the initial burden as above, the union has examined WW-01, Md. Hanif Shaikh who is Secretary of Farakka Barrage Project Boatmen's Union. Though he has stated that the management of Farakka Barrage Project controls and supervises their work and the boats used by the workmen are provided by the management of

Farakka Barrage Project, no documentary evidence has been filed on record to show the same. WW-01 himself has admitted that he was not working either in the ghats or in the project office. Thus, he cannot be said to have personal knowledge about control and supervision and supply of boats by the Farakka Barrage Project authorities. There is nothing on record to show that Farakka Barrage management ever appointed them, paid their wages and has authority to take disciplinary action against them. Contrary to it the management had filed photo copies of register of wages which shows that the workmen under reference were working in the establishment of contractors. In the documents name of contractor is specifically mentioned which shows that the wages were paid to them by the contractor. There is nothing in this document to show that the Farakka Barrage Project authorities have any control over the distribution of wages. The management has also filed copies of notice inviting tender, copy of agreement of free ferry services, copy of work orders given to the contractors and acceptance by the contractors which show that the work of free ferry services were given to the contractors for a limited period of time and for a fixed sum of money after giving wide publication of invitation to five tenders. The documents filed by the management bolster the claim of the management that the contract of service was awarded to the contractors who are free to engage boatmen or majhis and there was no relationship of employer and employee between the management of Farakka Barrage Project and the concerned workmen.

12. The management has also filed photo copies of certificate of registration, Ext. M-01 issued by the Ministry of Labour under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 which is sufficient to show that the Farakka Barrage Project was registered under the said Act and there is no violation of the same. Copy of registration issued by the office of the Deputy Chief Labour Commissioner (Central), Kolkata in favour of the contractors engaged by the Farakka Barrage Project have also been filed which are Exts. M-02 to M-07 to engage contractor labour. Thus, registration of principal employer as well as that of contractors has been established by the management by documentary evidence. Therefore, the contract cannot be said to be sham contract.

13. If for the sake of argument it is presumed that contract is a sham contract, then also, as held by the Hon'ble Apex Court in **Steel Authority of India Ltd**. v. **National Union of Waterfront Workers & Others**, CDJ 2001 SC 517 the workmen under reference cannot claim regularization. The relevant portion of the judgment may be quoted below –

> *"96. While this was the state of law in regard to the contract labour, the issue of automatic absorption of the contract labour came up before a Bench of three learned Judges of this Court in Air India's case (supra).*
>
> *The Court held: (1) though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer; (2) the Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employment; and (3) in a proper case the Court as sentinel on the qui vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has a constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer. Justice Majumder, in hisconcurring judgment, put it on the ground that when on the fulfillment of the requisite conditions, the contract labour is abolished under Section 10(1), the intermediary contractor vanishes and along with him vanishes the term "principal employer" and once the intermediary contractor goes the term "principal" also goes with it; out of the tripartite contractual scenario only two parties remain, the beneficiaries of the abolition of the erstwhile contract labour system, i.e. the workmen on the one hand the employer on the other, who is no longer their principal employer but necessarily becomes a direct employer for erstwhile contract labourers. The learned Judge also held that in the provision of Section 10 there is implicit legislative intent that on abolition of contract system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities under Chapter V in that very establishment. In regard to the judgment in Gujarat Electricity Board's case (supra), to which he was a party, the learned Judge observed that he wholly agreed with Justice Ramaswamy's view that the scheme envisaged by Gujarat Electricity Board's case was not workable and to that extent the said judgment could not be given effect to.*
>
> *97. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning and conclusions.*

****

****

116. .....

The upshot of the above discussion is outlined thus:

(1).....

(2).....

(3).....

(4) We over-rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment of in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on thebasis of this judgment in cases where such a direction has been giveneffect to and it has become final."

14. The case law cited by the workmen viz., **Secretary, Hariyana Electrilcity Board** (supra) does not help them as the same was based on Hon'ble Apex Court's judgment in **Air India Statutory Corporation etc.** v. **United Labour Union & Others**, 1997-I-LLJ 1113 which is already overruled by the Hon'ble Apex Court in Steel Authority of India Ltd. (saupra).

15. In view of above, I come to the conclusion that the workmen under reference are not entitled for regularization and consequently the action of the management in refusing to regularize the workmen under reference cannot be said to be illegal or unjustified.

16. The Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

26th November, 2019

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2154.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह– श्रम न्यायालय नंबर–2 चंडीगढ़ के पंचाट (संदर्भ संख्या 10/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-22011/06/2017-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2018*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s Food Corporation of India and their workmen, received by the Central Government on 06.12.2019.

[No. L-22011/06/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 10/2018

Registered on:-26.06.2018

General Secretary, Food Corporation of India Shramik Union 2712, 2nd Floor, Gali No.7,
Chuna Mandi, Near Sangatrashan Police Chowki, Pahargunj, New Delhi-110055. …Workmen-union

Versus

1. General Manager, Food Corporation of India, Regional Office, Sector 31-A, Bay No.34-38, Chandigarh-160017

2. Area Manager, Food Corporation of India, 804, Guru Dev Nagar, Ludhiana.

3. Area Manager, Food Corporation of India, Distt. Office,
SCO-48, Ladowali Road, Jalandhar (Punjab). …Managements/Respondents

AWARD

Passed on:-01.11.2019

Central Government vide Notification No. L-22011/06/2017-IR(CM-II) Dated 08.06.2018, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of Management of FCI to change the service condition of the workers of FCI depot at Noormahal Amloh, Nakodar and Jagraon in the State of Punjab against the settlement is justified. If not, what relief the workers are entitled to?"

1. On the receipt of the above reference, notice was sent to the workmen-union as well as the managements/respondents. The postal article sent to the workmen/union, referred above, did not return back hence, it is presumed by the Tribunal that postal service remained effected to the workmen/union. However, workmen/union is given an opportunity to file claim petition but none turned up in spite of the repeated opportunities and claim statement is not filed on behalf of the workmen-union. Thus, it is clear that the workmen/union is not interested in adjudication of the reference on merits.

2. Since the workmen/union has neither put their appearance nor has they led any evidence so as to prove their cause against the managements/respondents, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. It is also clarified that passing of the no claim award/no dispute award would not bar the workmen-union from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2155.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कोल इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 13/2010) को प्रकाशितत करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-22012/331/2006-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2010*)* of the Cent.Govt. Indus.Tribunal-cum-Labour Kolkata, as shown in the Annexure, in the industrial dispute between the management of M/s Coal India Limited and their workmen, received by the Central Government on 06.12.201.

[No. L-22012/331/2006-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNALAT KOLKATA

Reference No. 13 of 2010

Parties: Employers in relation to the management of M/s. Coal India Limited

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Aloke Banerjee, learned counsel with Mr. Uttam Kumar Mondal, learned counsel.

On behalf of the Workmen : Mr. Tridib Chakraborty, learned counsel.

State: West Bengal. Industry: Coal

Dated: 22nd November, 2019.

AWARD

By Order No.L-22012/331/2006-IR(CM-II) dated 05.10.2009 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"1. Whether there existed an employer-employee relationship between the management of Coal India Limited, Kolkata and Monmatha Jena & 18 others (as per list enclosed?)

2. If so, whether the action of Coal India Limited in discontinuing the workmen from employment w.e.f. 01.06.2004 is legal and justified?

3. To what reliefs are the workmen concerned entitled for?"

List of workmen

Sl. No.	Name	Place of work	Designation
1.	MANMATH KUMAR JENA	Rajib Point	Mali cum Supervisor
2.	TARAK NATH DAS	Rajib Point	Mali cum Supervisor
3.	BIJAY KUMAR JENA	Rajib Point	Mali
4.	ARUN ROY	Rajib Point	Night Guard
5.	PRASANTA KUMAR ROY	Up-Keeping	Sweeper cum Supervisor
6.	SUBRATA MANNA	Up-Keeping	Sweeper
7.	ARABINDO GHOSH	Up-Keeping	Sweeper
8.	SUNIL ROY	Up-Keeping	Sweeper
9.	BHUBANESWAR DAS	Up-Keeping	Sweeper
10.	SUKDEB DAS	Up-Keeping	Sweeper
11.	SMT. SUSHILA ROY	Up-Keeping	Sweeper
12.	SUSANTA GIRI	Sute Bajerjee	Mali
13.	JHADESWAR PRADHAN	Sute Bajerjee	Mali
14.	VINOD KUMAR ROY	Sute Bajerjee	Night Guard
15.	MADHAI KUNTI	8 Block	Mali
16.	UMESH CHANDRA BEHERA	8 Block	Mali
17.	SUKUMAR ROY	8 Block	Mali
18.	PRADIP KUMAR MANDAL	Eastern Zone	Mali
19.	SANJAY BISWAL	Eastern Zone	

2. After receipt of order of reference, parties were given notice in response to which both the parties appeared and filed their pleadings.

3. The statement of claims filed by the workmen reveals that the concerned workmen were appointed for the jobs of Malies and Sweepers and the management of Coal India Limited used to control and supervise their jobs. It is also claimed that their works were of perennial nature, but the management with a malafide intention to deprive them from legitimate demands called them contractor labour. The management of Coal India had given this terminology to the concerned workmen to camouflage the real employer – employee relationship and thereby introduced a system of sham contract only to defeat the legitimate claim of the workmen. The workmen concerned were working for 17 years. According to National Coal Wage Agreement the employer cannot employ any workmen through contractor or engage any contract labour on jobs of permanent and perennial nature. The management with an ill motive to harass the workmen stopped their payment of salary and employment from June, 2004 consequent upon which an industrial dispute

was raised AND PLACE before the Regional Labour Commissioner (Central), Kolkata FOR conciliation. On sending failure report by the conciliation officer, the dispute has been referred to this Tribunal for adjudication.

4. The management of Coal India in its written statement has denied the allegations made in the statement of claim and has pleaded inter alia that the alleged dispute is not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 as it is neither espoused by any union nor by an appreciable number of employees of Coal India. It is also pleaded that the Central Government is not appropriate Government. It is further pleaded that as an welfare measure under community development programme the maintenance of 'Desbandhu Park' was being looked after by the employer for a limited period and as such it was neither permanent nor perennial in nature, but purely a voluntary job and the same was discontinued. The employer never appointed the concerned workmen. However, for undertaking the maintenance job, notice inviting tenders was issued and the work was allotted to successful bidder on lump sum basis for a limited period not exceeding 12 months. No employer – employee relationship between the management of Coal India Ltd. and the concerned workmen existed. The management never paid salary to them and have no control whatsoever over them. The engagement of employees was in absolute domain and control of the contractor. They were free to engage their employees of their own choice. The contract was not a sham contract. National Coal Wage Agreement has no applicability in the establishment of Kolkata Municipal Corporation where the workmen were engaged.

5. A rejoinder was also filed by the workmen concerned in reply to the written statement filed by the management of Coal India Ltd.

6. Despite direction of the Hon'ble Apex Court for expeditious disposal on behest of the workmen concerned, the did not appear before this Tribunal to adduce evidence in support of their pleadings. WW-01, Shri Prasanta Kumar Roy filed his affidavit as examination-in-chief on behalf of the workmen, but after partial cross-examination, he did not appear for further cross-examination. Therefore, his statement in chief remained uncross-examined by the management. On behalf of the management Smt. Aditi Singh filed her affidavit as here examination-in-chief, but none appeared for the workmen concerned to cross-examine her. Therefore, learned counsel for the management could only be heard.

7. On the question of relationship of employer and employee the Hon'ble Apex Court in **Balwant Rai Saluja & Anr.** v. **Air India & Ors.**, 2014 (9) SCALE 567 = CDJ 2014 SC 694 has held as follows:

> *"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (1) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."*

8. The aspect of relationship of employer and employee is purely a factual question and the initial burden lies on the person who claims existence of employer – employee relationship. The Hon'ble Supreme Court in **Bank of Baroda** v. **Ghemarbhai Harjibhai Rabari**, 2005 (3) SCALE 353 has observed –

> *"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The degree of such proof so required vary from case to case."*

9. But, the workmen concerned have not discharged their burden to prove the existence of employer and employee relationship. However, the documentary evidence available on record proved otherwise. Keeping in view the directions of the Hon'ble Apex Court in **Balwant Rai Saluja case** (supra) it can be said that there is no appointment letter available on record to show that the management ever employed the workmen concerned. The salary was also never paid by the management. Though photo copy of the attendance register has been filed by the workmen, but nowhere they prove that the original attendance register was maintained by the management of Coal India Ltd. Contrary to it there is sufficient evidence on record to show that for maintenance of Desh Bandhu Park tender was floated by the company in response to which contract was awarded to the lowest bidder and the work orders were given to M/s. Uddyan for Rs.98,900/= inclusive of payment of Provident Fund, to M/s. S.K. Mukherjee for Rs.87,561/= and M/s. Surojit Roy for Rs.72,750/= for horticultural maintenance of South West Island and open garden, for maintenance of 8 Block Island and trees and for horticultural maintenance of Eastern Zone respectively.

10. Thus, it is sufficiently established that the workmen under reference were never appointed by the management of Coal India. They were never paid salary directly by the management and the management had no control and supervision over them. They were employed by the contractors to whom the contract was awarded for maintenance of Deshbandhu Park. In these circumstances, the claim of the workmen concerned that the contract is a sham contract and it was entered into by the management to camouflage the real relationship of employer and employees under reference is not sustainable. Therefore, they cannot claim absorption in the company.

11. In **Steal Authority of India Ltd.** v. **National Union of Waterfront Workers & Ors.**, CDJ 2001 SC 517 the Hon'ble Apex Court has considered the issue of automatic absorption. The relevant portion of the judgment may be quoted as below:

"96. While this was the state of law in regard to the contract labour, the issue of automatic absorption of the contract labour came up before a Bench of three learned Judges of this Court in Air India's case (supra).

The Court held: (1) though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer; (2) the Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employment; and (3) in a proper case the Court as sentinel on the qui vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has a constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer. Justice Majumder, in hisconcurring judgment, put it on the ground that when on the fulfilment of the requisite conditions, the contract labour is abolished under Section 10(1), the intermediary contractor vanishes and along with him vanishes the term "principal employer" and once the intermediary contractor goes the term "principal" also goes with it; out of the tripartite contractual scenario only two parties remain, the beneficiaries of the abolition of the erstwhile contract labour system, i.e. the workmen on the one hand the employer on the other, who is no longer their principal employer but necessarily becomes a direct employer for erstwhile contract labourers. The learned Judge also held that in the provision of Section 10 there is implicit legislative intent that on abolition of contract system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities under Chapter V in that very establishment. In regard to the judgment in Gujarat Electricity Board's case (supra), to which he was a party, the learned Judge observed that he wholly agreed with Justice Ramaswamy's view that the scheme envisaged by Gujarat Electricity Board's case was not workable and tothat extent the said judgment could not be given effect to.

97. For reasons we have given above, with due respect to the learned udges, we are unable to agree with their reasoning and conclusions.

****

****

116. …….

The upshot of the above discussion is outlined thus:

(1)……..

(2)…….

(3)……

(4) We over-rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment of in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."

12. Thus from the above decision of Hon'ble the Apex Court it is explicitly clear that there is no automatic absorption of the concerned workmen in the establishment, if the contractor has employed labours in violation of provisions of the Act of 1970 and they cannot claim that they are direct employees of the company.

13. Thus from above discussion I come to the conclusion that no employer – employee relationship existed between the management of Coal India Ltd. and the concerned workmen and the claim for absorption and continuance in service of the workman concerned after the end of contract for maintenance of Deshbandhu Park is neither legal nor justified.

14. The Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 22nd November, 2019

नई दिल्ली, 9 दिसम्बर, 2019

का. आ. 2156.—औद्यौगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भाखड़ा ब्यास प्रबंधन बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नंबर–2 चंडीगढ़ के पंचाट (संदर्भ संख्या 1318/2007, 1313/2007, 1315/2007, 1316/2007, 1317/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2019 को प्राप्त हुआ था।

[सं. एल-23012/5/2005-आई आर (सीएम-II),
सं. एल-23012/1/2005-आई आर (सीएम–II),
सं. एल-23012/3/2005-आई आर (सीएम-II),
सं. एल-23012/4/2005-आई आर (सीएम-II),
सं. एल-23012/2/2005-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 9th December, 2019

S.O. 2156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1318/2007, 1313/2007, 1315/2007, 1316/2007, 1317/2007*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Bhakra Beas Management Board and their workmen, received by the Central Government on 06.12.2019.

[No. L-23012/5/2005-IR(CM-II),
No. L-23012/1/2005-IR(CM-II),
No. L-23012/3/2005-IR(CM-II),
No. L-23012/4/2005-IR(CM-II),
No. L-23012/2/2005-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

1. **ID No.1318/2007**
Registered On:-04.07.2007
Mohan Singh S/o Ram Saran, Village Seogi P.O. Jari(Pandoh), Tehsil Sadar, District Mandi, H.P.

2. **ID No.1313/2007**
Registered On:-04.07.2007
Bed Ram S/o Poshu Ram, Village Thatta, P.O. Shiva Badar, Tehsil Sadar, District Mandi, H.P.

3. **ID No.1315/2007**
Registered On:-04.07.2007
Sher Singh S/o Chuhar, R/o Vill. Sapral, P.O. Shiva Badar, Tehsil Sadar, District Mandi, H.P.

4. **ID No.1316/2007**
Registered On:-04.07.2007
Thakur Dass S/o Nikka Ram, R/o Vill, Massar, P.O. Shiva Badar, Tehsil Sadar, District Mandi, H.P.

5. **ID No.1317/2007**
Registered On:-04.07.2007
Surender Kumar S/o Tarsem Lal, Q.No.P-2/251, Jari Colony, Pandoh,
Tehsil Sadar, District Mandi, H.P. …Workmen

Versus

1. The Bhakra Beas Management Board(BBMB) through its Secretary, Sector 19-B, Chandigarh.
2. The Chief Engineer, BBMB Sundernagar, District Mandi, H.P.
3. The Executive Engineer, Pandoh Dam Division, BBMB, Pandoh, Tehsil Sadar, District Mandi, H.P. …Respondents/Managements

AWARD

Passed on:-01.11.2019

Central Government vide Notification No. L-23012/5/2005-IR(CM-II), L-23012/1/2005-IR(CM-II), L-23012/3/2005-IR(CM-II), L-23012/4/2005-IR(CM-II) and L-23012/2/2005-IR(CM-II) Dated 01.05.2007, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial disputes separately for each workmen(name mentioned) related to the Department of Bhakra Beas Management Board for adjudication to this Tribunal:-

"Whether the action of the management of BBMB, Chandigarh in terminating the services of Sh. Mohan Singh (Bed Ram, Sh. Sher Singh, Sh. Thakur Dass, Sh. Surender Singh) w.e.f. 18.10.1996 without any notice and payment of retrenchment compensation is legal and justified? If so, to what relief the concerned workman is entitled to and from which date?"

1. The facts and law involved in all these cases are the same hence, the cases are decided on the request of both the parties by a common judgment, making leading case titled as Mohan Singh Vs. B.B.M.B, bearing ID No.1318/2017.

2. Brief facts, mentioned in the cases, alleging therein that workmen were working on daily wage with the management in different divisions of respondent-management in different trades as Beldar-cum-Driver. Their services were terminated by the management without giving notice or retrenchment compensation in gross violation of Section 25-F of the I.D. Act, 1947, though the management had the work for which they were employed. It is also pleaded that all the workmen had completed more than 240 days of service at the time of their termination from their services. It is also averred that management had employed outsiders, ignoring the claim of the workmen and preference as envisaged under Section 25-H of the I.D. Act was also not given to the workmen. It is further alleged that workmen preferred a CWP No.1291/95 before the Hon'ble High Court of Himachal Pradesh and stay was granted against disengagement and they continued as such up to 18.10.1996 when the writ petition was decided with the direction to make representation to respondent no.2 for consideration. The claimants served the board respondent for a sufficient long time and had completed more than 240 days during the preceding 12 months prior to the termination on 09.10.1996 when Civil Writ Petition was decided by the Hon'ble High Court of Himachal Pradesh, observing that workmen shall submit their representation to the respondent for consideration on merit and respondent no.2 rejected the representation made by the workmen finally on 18.10.1996 without considering the individual merit of the case of the workmen. The claimants along with others had filed again CWP No.17018/99 against the aforesaid decision of the respondent dated 18.10.1996 which had been decided on 21.04.1999 and the claimants were directed to make fresh representation to respondent no.2 for consideration which had to be decided within 4 months by respondent no.2. The claimants made their representation as per direction of the Hon'ble High Court of Himachal Pradesh but no reply has been received so far, forcing the workmen to prefer industrial dispute under Section 25-F of the Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court, Himachal Pradesh, which has been decided on 25.07.2003 with the observation that petition is not directly maintainable with reference of Section 25-F of the Act. It is prayed that the order dated 18.10.1996 of the respondent no.2 whereby discharging the services of the workmen may be null and void, re-engagement of the workmen on regular basis, fixation of seniority, back wages and compensation for entire employment period till date.

3. Management have filed their written statement, mentioning preliminary objection, that the present disputes are not legally maintainable. It is pleaded that the claimants/workmen have approached before the Hon'ble High Court of Himachal Pradesh in writ petition No.1291/95 for regularization of their services and for taking them in work charge establishment and to make the workmen services regular on the basis of the policy decision. The Hon'ble High Court vide order dated 16.08.1996 directed the management to reengage the workmen accordingly the workmen reengaged in compliance of the order of Hon'ble High Court. The said writ petition was finally disposed of on 09.10.1996 with the direction that applicants/claimants will make representation to the Chief Manager BBMB, which will be considered according to the direction given on 09.10.1986. It was contemplated that if the petitioners/claimants had completed the services of more than 240 days of continuous service on 31.08.1993, their case for regularization of service against the vacant post if available on 31.08.1993 has to be considered in accordance with the policy instructions of the board. It is also observed by the Hon'ble High Court that it is not possible to continue their services and it is open for the management to take such action as may be necessary even before the consideration of the representation. Accordingly, the services of the workmen were disengaged on 18.10.1996 after the vacation of the ex parte direction of the Hon'ble High Court. It is specifically pleaded by the management that all the workmen had not completed 240 days in a

calendar year as defined under the Act preceding 31.08.1993 i.e. cut of date as laid down by the Hon'ble High Court in the direction dated 09.10.1996. With regard to the petitioners/claimants in all other writ petitions it was left open to take such action. In pursuance of the order dated 09.10.1996, the Chief Engineer, BSL Sunder Nagar decided the representation of the workman along with others by way of speaking order vide which their claims were rejected being devoid of merit as they were not completed 240 days continuous service on daily wage basis as on 31.08.1993. After the order of dis-engagement from 18.10.1996 about 100 persons raised as many disputes before the Assistant Labour Commissioner, Chandigarh and Central Government, Ministry of Labour referred all the disputes to the Industrial Tribunal, Chandigarh for adjudication. The learned Tribunal vide award dated 10.06.2002 consolidated all the cases with I.D. No.10/2001, Mohinder Singh Vs. Chief Engineer and decided against the workmen therein. The petitioners/workmen feeling aggrieved with the award in I.D. No.10/2001 about 50 persons approached to the Hon'ble High Court of Himachal Pradesh by filing writ petition in the year 2007. The Hon'ble High Court of Himachal Pradesh in CWP No.1556/2002 titled Vijay Kumar Vs. BBMB and identical cases decided on 08.05.2007 has held that if a person does not succeed in a case filed by him then the period spend due to stay order is not taken into account for any purpose whatsoever except the wages paid for the period. It is therefore, requested that in view of the submission made above, the claim of the workmen are without merit and they are not entitled to any relief and the reference may be answered accordingly.

4. Workman Mohan Singh, Bed Ram, Sher Singh, Thakur Dass and Surender Singh have submitted their affidavit as evidence in their respective claim petitions and has got examined by the management-counsel in all the cases. During the course of cross-examination, the workman has accepted that they were working as daily wage employee at Pandoh and their services were terminated on 18.10.1996.

5. Management has submitted affidavit of J.P. Gupta, Senior Executive Engineer, Pandoh Dam Pandoh, in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen. During the course of cross-examination, he has stated that since the work being performed by the workmen was seasonal in nature as such, they were discharged from service. This witness has denied the suggestion of the AR of the workman that work of the claimants were not seasonal in nature. This witness is unable to tell whether any notice or retrenchment compensation had been given to the workmen and there were no seniority list in the record of the management. He has denied that workmen have completed more than 240 days in each calendar year. This witness has accepted that the workmen were never called to rejoin the service.

6. I have heard Sh. R.K. Parmar, AR for the workmen and Sh. Ravinder Rana, Law Officer, for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

7. Learned AR of the workmen at the very outset argued that he is not pressing the relief sought for reinstatement or re-engagement and regularization of services in the claim mentioned in the claim petition because either the workmen are superannuated or at the verge of superannuation. Learned AR of the workmen further argued that there is no dispute that workmen were the employees of the respondent-management and worked for 2 to 5 years as such, they are at least entitled for the compensation. In this connection, learned AR has placed reliance of the case of ***Roop Kalan Vs. Headmaster, Government School and Another, arising out of LPA No.470 of 2015, decided by the Division Bench of the Hon'ble Punjab & Haryana High Court.***

8. Learned Senior Law Officer of the management Sh. Ravinder Rana has contended that workmen have preferred three writ petitions before the Hon'ble High Court with the same relief which was prayed in the present claim petitions but of no success. Learned Law Officer further contended that the law laid down by the Hon'ble Punjab & Haryana High Court in case of Roop Kala (supra) is not applicable in the present case as it differs on the facts and ratio laid down by the Hon'ble Punjab & Haryana High Court is not applicable to case in hand. Learned Senior Law Officer further argued that there is no specific averment in the petitions of the workmen regarding the working days of their respective services rendered to the management as such, this Tribunal could not access the compensation in hypothetical manner without specific pleading when the specific working days of each and every workmen during their service rendered as daily wage employee are not on record.

9. At the very outset, it can be observed that there is no dispute regarding the writ petitions preferred by the workmen and their contemporaries before the Hon'ble Punjab & Haryana High Court registered as Writ Petition Nos.1291/95 and 17018/99. It is also settled rule that if any employee or workmen rendered his services to any management under the garb of the stay order of Hon'ble High Court or Hon'ble Supreme Court, that period could not be calculated for relief except the wages for the relevant period as is held by the Hon'ble Punjab & Haryana High Court in the Writ Petition No.1556/2002 decided on 08.05.2007. Thus, it is contended by the management that all the workmen have not completed 240 days of continuous service immediately preceding the year before their retrenchment/termination by virtue of interim order passed in the writ petition preferred before the Hon'ble High Court of Himachal Pradesh. The learned AR of the workmen vehemently argued that the extended period of service should be considered for the purpose of completion of 240 days of service and this period cannot be excluded and the applicants

are entitled to retrenchment compensation and notice etc. As per learned AR of workman, management has not complied with the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 as such, they deserve to be compensated by the reasonable compensation.

10. Learned Law Officer for the management while placing reliance of the case of ***Civil Writ Petition No.1556 of 2002, titled as Vijay Kumar Vs. BBMB, and identical cases vide its decision dated 08.05.2007,*** argued that the extended period of workmen due to stay order by the Hon'ble Court has not to be taken into account for any purpose whatsoever except the waged paid for the period. According to the Law Officer of the management, the judgment of the Hon'ble High Court of Himachal Pradesh has binding effect upon the claim petitions of the workmen for consideration before the Tribunal. Learned AR of the workmen also concealed that the position of law is clear and he is not pressing for compensation for that period which had been rendered by these workmen under the garb of the stay order of the Hon'ble High Court. Learned AR of the workmen argued that the period which had been served by these workmen before 01.01.1993 has to be considered for compensation as is held by the Hon'ble Punjab & Haryana High Court in the case of ***Roop Kalan(supra).***

11. In ***Roop Kalan(supra)*** case, the Hon'ble Punjab & Haryana High, the compensation of Rs.50,000/- for the period of 134 days has affirmed by the Hon'ble Court has no infirmity and the order passed by the learned Single Judge is confirmed in L.P.A. Going through the judgment of the Division Bench of Punjab & Haryana High Court, it is very much clear that no principles as such has been laid down by the Hon'ble Punjab & Haryana High Court that each and every case compensation has to be awarded for the days rendered by the workmen with the employer. The facts of that case is altogether different in which learned Tribunal had disbelieved the version of the management that Roop Kalan has left the job voluntarily and passed the order for re-engagement and further held that she was not entitled to the benefit of Section 25-F of the Act because she had not completed 240 days from the date of termination. The violation of Section 25-H of the Act was however held to be proved that Smt. Sara Devi was appointed in place of Roop Kalan on the recommendation of Gram Panchayat without affording the opportunity of hearing. The Tribunal while granting relief has held that Roop Kalan is entitled for the violation of Section 25-G of the Act by management accordingly order was passed for the reinstatement but without back wages. The Hon'ble Single Judge of the Punjab & Haryana High Court and later on Division Bench in ***LPA No.147/15 in Roop Kalan Vs. Headmaster(supra),*** awarded lum sum compensation. Thus, it is very much clear that in that case, voluntarily resignation of service by the workman was disbelieved and breach of Section 25-G of the Act was also proved. The Hon'ble High Court has held that the cooking of proper meal is in the nature contract of personal service which in the absence of statutory provision is not normally specifically enforceable. Resultantly, compensation of Rs.50,000/- was paid to the appellant Roop Kalan.

12. The facts of the claim petitions in hand are altogether different. There is nothing on record to prove that how many days each and every workmen have rendered their services with the management. Hence, this Tribunal is of the considered opinion firstly that on the hypothical manner, compensation for rendering services is not possible. Secondly, going though the reference, it is clear that Govt. of India, Ministry of Labour has referred these references for determination of the legality and validity of the order of the management dated 18.10.1996 which is passed without any notice and payment of retrenchment compensation. As per the Hon'ble High Court, if the services rendered by these workmen from the year 1993 to 09.10.1996 have not to be counted except the wages then there is no question by one month notice or retrenchment compensation payable to the workmen because of the provision of Section 25-F of the Industrial Disputes Act. Similarly, facts regarding the breach of Section 25-G is also not proved as there is no evidence on record at all.

13. Having gone through the facts and circumstances of the case, there is no merit in the claim petitions and the workmen are not entitled for any relief.

14. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

15. Copy of the award be kept in ID No.1313/2007 titled as Sh. Bed Ram, ID No.1315/2007 titled as Sh. Sher Singh, ID No.1316/2007 titled as Sh. Thakur Dass and ID No.1316/2007 titled as Sh. Surender Singh Vs. Bhakra Beas Management Board.

A. K. SINGH, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 1/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 को प्राप्त हुआ था।

[सं. एल-12012/138/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of The Federal Bank Ltd. and their workmen, received by the Central Government on 10.12.2019.

[No. L-12012/138/2006-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 18th day of October 2019, 26 Asvina 1941)

ID No. 1/2007

Workman : Shri S.Ashraf, Ex-Sub Staff,
Charuvila Veedu, Meverkal,
Alamcode,
PO Via Attingal,
Kerala.
By Adv. Anil Kumar

Management : The Chairman,
The Federal Bank Ltd., Head Office,
Alwaye- 683101.
Kerala.

By Adv. B.S. Krishna Associates

This case coming up for final hearing on 6-9-2019 and this Tribunal-cum-Labour Court on 18-10-2019 passed the following;

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/138/2006-IR(B-I) dated 13-12-2006 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is-

"Whether the action of the management of the Federal Bank Ltd. with its headoffice at Alwaye, Kerala in relation to their Perumathura branch in terminating the services of Shri S.Ashraf, Sub-Staff vide order dated 7-1-2006 is proper and justified? If not, what relief the applicant concerned is entitled to?"

3. According to the workman, he joined the service of the management Bank as sub staff on 12-12-1983. From 11-5-1985 he was working in the Perumathura branch of the management Bank. Due to shortage of clerical staff, the management used to depute him to do the clerical work as well. On 12-12-1990, he was deputed to do clerical work by the Manager of the Bank. On that day, many cheques, withdrawal forms, deposit slips and other bills were presented for clearance and he issued tokens for all these instruments. One of the withdrawal forms pertain to Shri K.Ashraf for Rs.16,000/-. The workman passed the instrument, duly posted in the respective account and give the same to the concerned officer to verify and confirm signature on the documents before payment. Accordingly the payment was effected. Shri K.Ashraf disowned the receipt of money later. The management conducted detailed investigation regarding the alleged incident but nothing could be brought out. Shri K.Ashraf filed a complaint with the Bank and the Bank in turn filed a complaint with the Police. The workman was arrested by the Police on 23-9-1992 on the basis of the alleged misconduct. The workman was kept under suspension vide order dated 23-9-1992. In the criminal proceedings before the First Class Judicial Magistrate Court, Attingal, Shri George Cherian George, Manager, Perumathura branch, Krishnan Kutty Nair and Babu Kumar, Officer, Purushothaman Sajan, Clerk, Joseph Augustine, Sr. Investigating Officer and K.Ashraf, the defacto complainant, were examined. The workman's handwriting was also sent to forensic laboratory for examination during the investigation. On conclusion of criminal proceedings, the workman was sentenced to undergo imprisonment for a period of 2 years. On conviction, the workman was dismissed from service vide order dated 12-9-1998. The workman filed an appeal before the Sessions Court, Trivandrum as Criminal Appeal No. 181/98 which

ended up in the acquittal of the workman. The Appellate court found that the finding of guilt by lower court was on mere suspicion, assumptions and presumptions. On the basis of the decision of the Session Court, the workman requested the management to reinstate him in service vide his representation dated 14-11-2003. Instead of reinstating him, the management decided to initiate disciplinary action against him. Without even affording an opportunity to the workman, an enquiry was ordered against him. The procedure followed by the management in ordering an enquiry without reinstating him in service is unsustainable. The management violated all the related provisions under the Bipartite Settlement. Though the management gave subsistence allowance, the allowances were calculated on the salary drawn by him at the time of initial suspension on 29-9-1992. The Enquiry Officer examined K.S.Babukumar and Shri M.J.Augustine who were prosecution witnesses in the criminal trial. Based on their testimony, the Enquiry officer found the workman guilty of the alleged charges. The defacto complainant Shri K.Ashraf was a prosecution witness in the criminal trial but was not examined by the Enquiry Officer in the departmental action. The discrepancy in the dates of crucial documents were ignored by the Enquiry Officer. The testimony which was disbelieved by the Appellate Court were heavily relied on by the Enquiry Officer. The enquiry conducted against the workman was in violation of the principles of natural justice and fairness. The Enquiry Officer was biased and acting under the instructions of the management. There was no evidence in the enquiry against the workman. Still the Enquiry Officer found the charges proved against the workman. The findings of the Enquiry Officer are perverse and is unsustainable especially in view of the judgment of the Sessions Court. Accepting the finding of the Enquiry Officer, the workman was dismissed from service vide order dated 7-1-2006. The past unblemished service of the workman was not considered by the management while imposing punishment.

4. The management filed Written Statement denying the above allegations. Shri S.Ashraf while working as Bankman (subStaff) at Perumathura branch was reported to have fraudulently withdrawn an amount of Rs.16000/- from the SB Account of the branch on 12-10-1990. On receipt of a complaint from the customer, the management filed a police case and police arrested the workman and registered a criminal case against him. The workman was placed under suspension as per order dated 29-9-1992. The police case against the workman was registered as CC No. 340/93 before the Ist Class Judicial Magistrate at Attingal. The Judicial Ist Class Magistrate as per order dated 30-4-98 convicted Shri S.Ashraf and sentenced him to undergo simple imprisonment for 2 years for offence under Section 420, 468 &47 of Indian Penal code. In view of the conviction, the workman was dismissed from service on 12-9-98 in terms of provisions of para 19.3(b) of Bipartite Settlement dated 19-10-1966 which was subsequently substituted and superseded by clause 3(b)of Bipartite settlement dated 10-4-2002. The appeal filed by the workman before the Sessions Court, Trivandrum was allowed and conviction and sentence imposed on the workman were set-aside and he was acquitted and set at liberty. Para 19.3 of Bipartite Settlement dated 19-10-66 provide that "if an employee prefers an appeal or revision application against his conviction and is acquitted, in case he has already been dealt with as per clause 19(3)(b) of Bipartite Settlement dated 19-10-66 as modified by clause 3(b) of Bipartite Settlement dated 10-4-2002 and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him in service or proceed against him as per the provisions in clause 19.11 and 19.12 of Settlement dated 19-10-66 as modified by clause 11 & 12 of settlement dated 10-4-2002. The management decided to initiate disciplinary action against the workman and issued a chargesheet dated 16-7-2004. Accordingly an Enquiry Officer was appointed and the Enquiry Officer conducted the enquiry in compliance with the principles of natural justice. The workman fully participated in the enquiry. He was allowed to be defended by an Advocate. The Defence representative cross-examined the management witness and adduced defence evidence. After proper appreciation of evidence, the Enquiry Officer found that the fraudulent withdrawal of Rs.16000 from SB Account No. 1942 of Shri K.Ashraf couldnot have been made without the knowledge and involvement of the delinquent workman. The Enquiry Officer also found that there are strong circumstantial evidence coupled with the application of principle of preponderance of probability to show that the fraudulent withdrawal from SB Account No. 1942 of Shri K.Ashraf was made either by the delinquent himself or the delinquent has withdrawn the money with the help of someone else. Hence the Enquiry Officer concluded that the omission on the part of the delinquent would constitute the misconduct of doing any act prejudicial to the interest of the Bank. The Enquiry Officer therefore held the delinquent guilty of charges. A copy of the enquiry report was given to the workman. The Disciplinary Authority after proper consideration of the evidence and submission of the workman, found no reason to interfere in the finding of the Enquiry Officer. The workman was issued with a notice dated 16-12-2005 affording an opportunity of hearing with regard to proposed punishment. In view of the gravity of charges proved and considering the facts and circumstances and submissions of the workman, the Disciplinary Authority found that the termination of service proposed is the appropriate punishment for the misconduct proved. The service of the workman was accordingly terminated as per order dated 7-1-2006. He was paid 3 months pay and allowance in lieu of notice as provided in the provisions of Bipartite Settlement. The appeal filed by workman was also rejected by the Appellate Authority vide order dated 24-3-2006. The management also pleaded that in case the tribunal finds that the Disciplinary Action against the workman is vitiated in any manner, the management may be allowed to prove the charges against the workman by adducing fresh evidence.

5. On completion of pleadings, this Tribunal framed the issue as follows-

(1) Whether acquittal in criminal case should end in acquittal in departmental proceedings?

This Tribunal vide order dated 6-10-2008, found that since the workman was acquitted in the criminal case, the departmental proceedings should have ended in acquittal. Accordingly the Tribunal ordered the management to reinstate workman in service with backwages from the date of his acquittal from the criminal case i.e. from 20-6-2003.

6. The management moved the Hon'ble High Court in Writ Petition No. 9797/2009. The Hon'ble High Court vide order dated 6-7-2017 held that the Tribunal was not correct in confining the point of consideration as to acquittal of criminal case by holding that acquittal in criminal case would have a bearing in the departmental proceedings. The Hon'ble High Court also ordered that the question to be considered is whether termination of such an employee in departmental proceedings is correct based on the evidence adduced. In view of the above, the matter was remitted back to the Tribunal for re-consideration. The management filed Writ Appeal No. 1915/2017 challenging the above said order. The Division Bench of Kerala High Court by order dated 22-9-2017 upheld the order of the Learned Single Judge. However clarified that the observations made in the judgment will not stand in the way of the Tribunal in independently appreciating the case of both sides and disposing off the reference in accordance with law.

7. On remand, notice was issued to both the parties. Both the parties entered appearance through their counsels and the matter was heard. On the basis of the directions by the Division bench of Hon'ble High Court of Kerala, the matter was heard on the basis of the evidence already available in the proceedings. On the basis of the pleadings and evidence, the following issues are framed for final adjudication.

(i) Whether the enquiry is conducted in a fair and proper manner following the principles of natural justice?

(ii) Whether the findings of the enquiry are supported by legal evidence?

(iii) Whether the punishment awarded to the workman is proportional to the charges proved against him?

(iv) Relief and Costs?

8. Issue No. 1.

The management issued a chargesheet to the workman vide order No. AW.DE.15.04 dated 16-7-2004 stating that it was decided to proceed against Shri Ashraf in terms of clause 3(b) of Bipartite Settlement dated 10-4-2002 by initiating disciplinary action on the following charges-

(i) Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.

The facts and circumstances leading to the above chargesheet is that one Shri K.Ashraf holder of SB Account No. 1942 at branch Perumathura was operating his account using withdrawal forms as no cheque was issued in the account. On 28-12-1990, Shri K.Ashraf approached the branch to withdraw Rs.17000/- from his account. It was noticed that balance in the account was only Rs.2331.85 against the required balance amount of Rs. 18000/-. On verification of the records, it was found that an amount of Rs.16000 was withdrawn from the account on 12-10-1990 using a withdrawal form without the knowledge and consent of the account holder. The customer Shri K.Ashraf denied having withdrawn any amount on 12-10-1990. On 12-10-1990, out of the 5 clerical staff, 3 were on leave and only 2 clerical staff were present on duty. Therefore, Shri S.Ashraf, Bankman was allowed to handle SB Section on that day. The disputed withdrawal form of Rs.16000 dated 12-10-1990 was posted in the account by Shri S.Ashraf Bankman and the entry was initialed by him. The token was also issued by him and token No. 104 was written by him on the reverse of the withdrawal form. The withdrawal form was passed for payment by Sri K.S Babu Kumar , the then officer of the branch. The withdrawal form was passed for payment by him after ascertaining that the party was identified by Shri S.Ashraf who had posted the withdrawal form. The withdrawal form was having a folding in the middle indicating that the same was taken out of the branch before presenting the same at the counter for payment. From the style of writing appearing in the withdrawal form, it appears that the same was prepared by someone conversant with the accounting/ banking. The account holder Shri K.Ashraf denied having visited the branch on 12-10-1990 and prepared the withdrawal form and disowned the sign seen in the withdrawal form. He also submitted a complaint with the Bank and requested for refund of the amount. During the investigation conducted by the Bank, when Shri S.Ashraf who handled the SB section on 12-10-1990 was interrogated, he expressed inability to recollect anything about the transaction. However various facts and circumstances mentioned below indicate that Shri S.Ashraf who had close acquaintance with the customer was aware of the various transaction in the account and that without the knowledge and help of Shri S.Ashraf,Bankman the amount of Rs.16000 would not have been withdrawn from the account on 12-10-1990.

9. According to the management, on 2-3-1990, he customer Shri K.Ashraf remitted Rs.25000 in his SB account and the balance in the account as on 2-3-90 was Rs.29289.60. Thereafter he had withdrawn Rs.2000 & Rs.10000 from the account on 12-3-1990 and 13-3-1990. Subsequent to this, there was no withdrawal in the account for about 7 months. The remittance dated 2-3-90 was prepared by Shri S.Ashraf and he had helped the customer to deposit the money. At

that time, he had also suggested the customer to deposit Rs.25000 as fixed deposit. Similarly the withdrawal form dated 12-3-90 for Rs.2000 was also prepared by Shri S.Ashraf and it was he who had issued token and wrote the account number of the customer in the withdrawal form even though the section was handled by Shri K.P.Sajjan, Clerk and he had posted the said withdrawal form. On 12-3-1990, when the customer misquoted his account number, Shri S.Ashraf corrected the same as 1942. On 16-8-1990, a cheque for Rs.500 was issued in favour of Shri K.Ashraf drawn in his NRI, SB Account No. 312 and this amount was transferred and credited to the SB account of Shri K.Ashraf on the same date. The transfer slip dated 16-8-90 for Rs.500 was prepared and the entry was done in the ledger by Shri S.Ashraf. Shri S.Ashraf was reportedly having some money lending activities and was running a video cassette library during the period of that time. The customer Shri K.Ashraf was having business of dealings of foreign goods and Shri S.Ashraf visited Shri K.Ashraf several times for buying video cassettes. Both the customer and Shri S.Ashraf were closely known to each other and the later used to assist the customer in his various transactions in his account. Since the customer was very much familiar and close to Shri S.Ashraf, he used to approach Shri S.Ashraf for banking transactions. Shri S.Ashraf was therefore aware of the balance lying in the bank account No. 1942 of Shri K.Ashraf which was not withdrawn for sometime. In the instant case, the withdrawal form dated 12-10-90 for Rs.16000 was posted in the account and token was issued by ShriS. Ashraf after identifying the party and satisfying himself of the transaction. Therefore without the knowledge of Shri S.Ashraf, no transaction could have been possible in the SB account 1942 of the customer.

10. The case of the management is that on 12-10-90, Shri S.Ashraf was handling SB section and as a person handling SB section he was responsible for proper identification of the customer before receiving the withdrawal form and posting the same in the ledger. On previous occasions also, Shri S.Ashraf had handled SB section and he had assisted the party in encashing withdrawal forms/ remitting money in his account and he was the only member of staff who had close acquaintance with the account holder as well as his signature. As the handwriting and signature appearing on the withdrawal form dated 12-10-1990 was not found to be that of the customer and further since the customer had denied his visit to the branch on 12-10-1990, it is evident that the withdrawal form was presented for payment by somebody other than the customer without his knowledge. Shri Ashraf who was in the SB section has posted his withdrawal form after duly identifying the party. Therefore, it is clear that without the knowledge of Shri S.Ashraf, no transaction could have taken place in the account but his pleading ignorance in the matter is only to save himself from the consequences. Investigation conducted by the Bank also revealed that during the relevant period, Shri S.Ashraf was in urgent need of funds in connection with his sister's marriage, he being the eldest in the family. Further on 19-12-1990, Shri S.Ashraf had obtained payment of a cheque for Rs.14750/- drawn in the CC account No. 1 in the name of M/s Thoppil Industries which is reported to be a borrowing. From the facts and circumstances of the case discussed above, it is evident that only with the knowledge and involvement of Shri S.Ashraf , the amount of Rs.16000 was withdrawn from the account on 12-10-1990. It is therefore alleged that Shri Ashraf had fraudulently withdrawn Rs.16000 from SB Account No. 1942 on 12-10-1990 either by himself or with the help of somebody. Bank had refunded the amount fraudulently withdrawn from SB Account No. 1942 to the customer.

11. On a perusal of the proceeding of the enquiry by the Enquiry Officer, it is seen that the chargesheet was read out to the workman by the Enquiry Officer and confirmed that he understood the charges leveled against him. The workman denied the charges alleged against him. The workman also informed the Enquiry Officer that he had already given a reply to the management . The workman sought the assistance of Advocate as Defence Assistant and the same was allowed in the enquiry. On a quarry by the Enquiry Officer, the workman replied that he had received all the documents except item No. 21, 22 and part of Item No.18 mentioned in the memorandum of charges. It is seen that the Enquiry Officer directed the management representative to provide copies of Item No. 21 & 22 to the workman. Though the management representative objected to production of complete report in Item No. 18, the Enquiry Officer directed the management representative to handover a complete copy of Item No. 18 to the workman. The Defence Representative also requested for the production of a letter dated 22-1-1991 received from Shri K.Ashraf, the customer. The management representative was directed to give a copy of letter dated 22-1-1991 also to the Defence side. The management examined two official witnesses and they were cross examined by the defence in the proceedings. The workman was also allowed to lead his evidence. The true copies of the deposition of witness in the court of Judicial Ist class Magistrate on 9-2-1998 and copy of the letter No. B1-1817/FSL/93 dated 1-12-1994 of the Director of Forensic Laboratory Trivandrum to Judicial Ist Class Magistrate Court, Attingal were also admitted in the enquiry by consent of parties, though the Enquiry Officer was of the view that such documents can be marked only through the originator or through a person who received the document. It is also seen that the Enquiry Officer has given an opportunity to the workman to comment on the related issues of the enquiry before closure of the proceedings.

12. From the above narration, it is very clear that the Enquiry Officer has conducted the proceedings in a fair and proper manner following the principles of natural justice.

Hence Issue No.1 is answered in favour of the management and against the workman.

13. **Issue No. 2.**

The allegations leveled against the workman were that while working as Bankman at Perumathura branch of the management Bank, he had committed a fraud in SB account No. 1942 maintained in branch by Shri K.Ashraf. Though he was a Bankman, due to shortage of staff in the branch, the workman used to be deployed to handle the work that was normally handled by a clerical staff. On 12-10-1990, the workman was handling SB section and he received a withdrawal slip and after entering in the ledger, the same was handed over to MW-1 for approval. MW-1 approved the payment and the same was released to the person who presented the withdrawal slip. According to the evidence available in the enquiry, when a withdrawal slip is presented without passbook, it is the sanctioning authority i.e. MW-1 who is required to identify the Presenter of the withdrawal slip before the same is approved. According to MW-1, he has confirmed the identity of the presenter from the workman before approving the same. The management examined Shri K.S.Babukumar, Manager as MW-1 and Shri M.J.Agustin, Sr.Manager Inspection as MW-2 in the case. The crucial exhibit in the enquiry was that of Exhibit ME-9 which is a zerox copy of withdrawal form dated 12-10-1990 for withdrawal of rs.16000/- from SB Account No. 1942 of Shri K.Ashraf. Exhibits ME-15 dated 22-1-1991 submitted by Shri M.J.Agustin Sr. Inspecting Officer regarding the investigation conducted by him and the report dated 26-2-1991 i.e. ME-16 regarding the final investigation report is also relevant as far as the management is concerned. There is no dispute regarding the fact that the workman was holding the charge of SB section on 12-10-1990 and he has posted the withdrawal of Rs.16000/- in the ledger. From Exhibit ME-13, it is also seen that the workman has allotted a token number of 104 on the reverse side of the withdrawal form. Exhibit M-14 is a letter issued by MW-1 to Chief vigilance Officer. A plain reading of Exhibit M-14 clearly shows that MW-1 used to identify the customer even if there is a slight difference in signature. As per Exhibit ME-14. MW-1 states that "I believe in the present case also I got the customer identified by the Bank staff Mr. S.Ashraf who posted the instrument as a precautionary measure and as per the practice prevalent." It is very clear from the above that the subsequent statement of MW-1 in evidence during the course of enquiry that he got the identification of customer done by the workman is not fully correct. In Exhibit ME-15, the preliminary investigation report submitted by MW-2 with regard to the features of withdrawal form, it is reported that " it is a withdrawal form without serial number. There is no withdrawal form issue register. It is not obligatory vide Memorandum of Instructions clause 4.116. But the name and account number of person to whom it is issued are not recorded on the withdrawal form under his initials by the checking officials as required by the same clause. The effect of this clause is that the time gap between the issue and presentation of withdrawal form is very limited and doesnot provide for a forgery under normal circumstances. In the captioned case, the withdrawal form shows a folding in its middle which indicates that it was taken out and presented later". Further in the Exhibit ME15 report, it is also mentioned that on 12-10-1990 a token was issued. Presence of somebody in the counter is indicated by Shri Babukumar by his usual marking as already discussed. These evidences on the part of the investigating officer of the Bank clearly shows that there were flows while issuing Exhibit ME-9 withdrawal slip to a customer and further that the presence of a person in the counter for tendering the withdrawal slip and receiving the money is clearly indicated. Exhibit ME-16 is the final report given by MW-2 after completing his investigation. There are some interesting observations regarding Shri K.Ashraf, the account holder in the report. MW-2 feels that the action on the part of Shri K.Ashraf, the account holder is suspicious for the following reasons-

i. He has put up a very strong alibi for 12-10-1990. It can be more than a coincidence.

ii. He appeared to be oversmart. He uses different signature for different occasions, (suspectedly) avoids exhibition of his handwriting, takes zeroxcopies and is able to analyze the lapses/ faces of the branch staff so as to present them against the persons.

iii. The Branch Manager felt his role suspicious.

Exhibit ME-16 reports concludes stating that **"however , in the background of available data, it will not be possible to pin point on any body on account of the fraud. It may be possible only by lodging a police complaint, especially since use or involvement of a 3rd party from outside can also be suspected."**

When MW-2 was examined in the enquiry, he stated that he recommended police investigation because the end man who received the cash couldnot be identified. It has also come out in evidence that the cashier of the Bank also couldnot identify the person who received the cash from the bank against Exhibit ME-9 withdrawal slip.

14. From the analysis of the evidence available in the enquiry file, it is very clear that there is no absolute evidence as to who committed the forgery in Exhibit ME-9 and also there is no evidence as to who received the money from the Bank. These are the two critical information that is required to prove the involvement of the workman in the alleged

offence. Having failed to establish those issues categorically, it is difficult to accept the findings which is only based on presumptions and assumptions.

15. It is relevant to point out that the management has filed a police complaint regarding the same incident. The case filed against the delinquent was registered as CC No. 340/93 before the Ist class Judicial Magistrate, Attingal. The judicial Ist class Magistrate vide order dated 30-4-98 convicted the workman and sentenced him to undergo simple imprisonment for two years for offences punishable under Section 420, 468 & 471 of Indian Penal Code. The workman preferred an appeal before the Sessions Court, Trivandrum as Criminal Appeal No. 181/98. The Sessions court found that the decision of the lower court was based on mere assumptions and there is no evidence to support the guilt of the workman. Accordingly the conviction and sentence on the workman were set-aside and he was acquitted and set at liberty. In the criminal case, the prosecution examined 9 witnesses and marked documents P-1 to P-17. In the domestic enquiry, two witnesses were examined and 16 documents were marked on the management side and 2 documents were marked on defence side. MW-1 & 2 in the domestic enquiry are PW-3 & 5 in the criminal case. Almost all the documents marked in the criminal case were also marked in the enquiry. After detailed analysis of the evidence, the Appellate court in the criminal case found that the prosecution failed to prove that the appellant committed forgery and had withdrawn money as per Exhibit P-9 withdrawal slip.

16. The learned counsel for management relied on the decision of Hon'ble Supreme Court in **JDJ V management of State Bank of India 1982-AIR(SC) 673** to argue that strict rules of evidence are not applicable to domestic enquiry and hence the decision in the criminal case cannot be accepted to hold that there is no evidence to substantiate a chargesheet in a disciplinary case. The learned counsel for the management also relied on the decision of Hon'ble Supreme Court in **State of Haryana V Ratan Singh 1977 AIR(SC)1512** to hold that " the simple point is, was there some evidence or was there no evidence- not in the sense of technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and wordley wisdom will accept". In this case, the question is whether there is any evidence to support the charge of forgery committed by the workman and whether there is any evidence to show that the workman has withdrawn the money as alleged in the chargesheet. In the above referred decision of the Hon'ble Supreme court, the Court also pointed out that " absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law appearing on the face of the record". In the present case, the management could only establish that the defacto complainant and workman were known to each other and that the workman was sitting in SB counter on the said day and made ledger entry which is also admitted by the workman. The learned counsel for the management relied on the decision of Hon'ble High Court of Delhi in **Mahendrapal Verma V the TajmahalHotel , CDJ 2013 DHC-04** to argue that once an enquiry is found to have been conducted in accordance with applicable rules and principles of natural justice, it is not open to the Industrial Tribunals to revisit the factual findings arrived therein. As already pointed out, it is settled law that when there is no evidence in arriving at a particular finding by the Enquiry Officer, this Tribunal is justified in invoking Section 11 A of Industrial Disputes Act to arrive at a different conclusion. The learned counsel for the management also relied on the decision of Hon'ble Supreme Court in **Management of Bharat Heavy Electricals V M.Money and another, CDJ 2017-SC-1245** to argue that in a case where an enquiry has been held independent of criminal proceedings, acquittal in criminal case is of no avail. It has been held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different.

17. For the reasons stated above, I am inclined to hold that the finding of the Enquiry Officer that the charges are proved is perverse and without any evidence.

Hence Issue No.2 is decided in favour of the workman and against the management.

18. **Issue No. 3-&4**

In view of the finding at Issue No.2, the workman is entitled to be reinstated in service. He is entitled for back wages from 20-6-2003 the date on which he is acquitted by the criminal court.

19. Hence an award is passed holding that the action of the management of Federal Bank in terminating the service of Shri S.Ashraf is not legal and justified and he is entitled to be reinstated. He is entitled for backwages from 20-6-2003, the date on which he is acquitted by the criminal court and he is entitled for all other consequential benefits from that date.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 18th day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	
MW-1- Shri Syriac Joseph on 22-9-2008		
Exhibits for the workman	-	Nil

Exhibits for the Management:-

M1 - Enquiry File

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 27/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam* as shown in the Annexure, in the industrial dispute between the management of Federal Bank Ltd. and their workmen, received by the Central Government on 10.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 5th day of September 2019, 14 Bhadra 1941)

ID No. 27/2015

Workman	:	Shri Bipin P.Babu, Pullattu House, Paravoor Junction, Thottakkattukara PO, Aluva- 683108. By Adv. A. Jayasankar
Management	:	The General Manager, Federal Bank Ltd. Federal Towers, Aluva – 683108. By M/S.B.S.Krishnan Associates

This case coming up for final hearing on 9-7-2019 and this Tribunal-cum-Labour Court on 5th September 2019 passed the following:

AWARD

1. This is an application filed by workman under Section 2(A) of the Industrial Disputes Act 1952.

2. The workman was employed as Bankman in the service of the management Bank. He joined Kothamangalam Town branch on 17-12-2012 and subsequently transferred to Muvattupuzha branch. Workman was confirmed in service vide order dated 8-7-2013. The management received an anonymous complaint alleging that the workman had concealed his educational qualification at the time of applying for the post of Bankman. An investigation conducted by the vigilance branch of the management Bank found that the workman passed SSLC during March 2003 and a Transfer

Certificate was issued by St.Mary's High School, Aluva to that effect. He applied for the post of Bankman concealing the fact of passing SSLC by producing a duplicate extract of school register attested by the Head Master. According to the workman, he applied for the post on the instigation by one Shri Jerry Jose who started blackmailing and extorting money from the workman. The workman was placed under suspension by an order dated 13-12-2013. A formal chargesheet was issued on 9-1-2014 alleging misconduct of knowingly making a false statement in connection with employment and doing acts prejudicial to the interest of the Bank. Manager, HR,(Employees Relation and Operation) was appointed as Enquiry Officer and Shri B.Radhakrishnan was appointed as Management Representative. The workman participated in the enquiry and he appointed Shri A.K.Varghese, a Union Representative as his Defence Assistant. The Enquiry Officer submitted his report on 13-3-2004 finding the workman guilty. A copy of the Enquiry Report was communicated to the workman and a punishment of dismissal was also proposed. After personal hearing on 26-5-2014, the workman was dismissed from the service of the Bank vide order dated 12-8-2014. The workman preferred an appeal before the Appellate Authority. The same was also dismissed vide order dated 27-9-2014. The domestic enquiry conducted against the workman was in gross violation of principles of natural justice. The findings of the Enquiry Officer are perverse. The workman is not guilty of any misconduct. Passing of SSLC examination cannot be taken as a misconduct. It is well settled that qualification cannot be a disqualification. Even assuming that the workman is guilty of concealment of educational qualification, he was only a victim of circumstances. He was mislead by Shri Jerry Jose who is an employee of the management Bank which was explained to the Sr. Manager by the workman. The Disciplinary Action against the workman is vitiated by malafides and amounts to victimization and unfair labour practice.

3. The management filed Written Statement denying all the above allegations. The workman herein has secured employment by playing fraud on the Bank, making the contract of service unenforceable. He secured employment by submitting false testimonials to the Bank without complying with eligibility criteria making his appointment ab-initio void. As per the eligibility criteria, the educational qualification stipulated by the management Bank for the post of Bankman was that the candidate should have passed standard 7 but shall not have passed SSLC or equivalent examination. In the application cum personal data submitted by the workman, he declared his educational qualification as 7th standard. In the extract of Admission Register dated 12-3-2012 submitted by the workman, it was stated that he had been admitted to Sr.Mary's High School, Aluva to 8th standard and had left school in 9th standard on 10-7-2002. Further the workman had given a declaration dated 17-10-2012 stating that he had studied upto 9th standard only and he had not appeared for the SSLC examination. On the basis of the documents and data provided by the workman, the Bank found him eligible for the post of Bankman and he was appointed and confirmed in the service of the Bank. On the basis of a complaint received by the Vigilence department of the Bank, an investigation was conducted and it was found that the workman had not left the school during the year 2002 as stated in the extract of Admission Register submitted by him in the Bank and he had passed SSLC Examination in March 2003 with 270 marks. A Transfer Certificate dated 10-6-2003 was issued to the workman specifying that he passed SSLC Examination in March 2003. During the process of appointment, the workman falsely declared that he discontinued studies in 9th standard and had submitted a false extract of Admission Register showing that he had left school in the year 2002. During investigation, the workman admitted that he concealed his passing of SSLC Examination from the management Bank for getting the job. The Bankman was kept under suspension and the workman was charged with acts of gross misconduct. The Enquiry Officer conducted the enquiry as per rules and strictly in accordance with the principles of natural justice, after providing adequate opportunity to the workman and found the workman guilty of the charges levelled against him. The workman was given opportunity to cross-examine all the management witnesses and copies of the documents were also given sufficiently in advance to the workman. The Enquiry Officer returned a finding of guilt against the workman. After analyzing the entire records of enquiry, the Disciplinary Authority concurred with the findings of Enquiry Officer and workman was held guilty of committing acts of gross misconduct of knowingly making false statement in any document pertaining to or in connection with the employment in the Bank and doing acts prejudicial to the interest of the Bank. After considering all the facts and circumstances of the case, the Disciplinary Authority proposed to impose the punishment of dismissal without notice on the workman. The workman was also given an opportunity of personal hearing and the Disciplinary Authority finally imposed a punishment of dismissal on the workman vide order dated 12-8-2014. The Appellate Authority also rejected the appeal vide order dated 26-5-2014. The charges were admitted by the workman during the course of iinvestigation and the workman has no case that he is eligible to be considered for appointment as Bankman in the management Bank. The workman raised allegation against Shri Jerry Jose against whom also a Disciplinary proceeding was initiated and appropriate punishment was imposed on him for the charges proved against him. In the enquiry against Shri Jerry Jose, the workman was examined as witness and hence the workman cannot say that no action was initiated against Shri Jerry Jose. The allegations regarding malafides, victimization and unfair labour practice are absolutely baseless and incorrect. The enquiry proceedings were conducted in compliance of the principles of natural justice and the workman was given enough opportunity to adduce evidence to disprove the charges against him.

4. On completion of pleadings, the Disciplinary Enquiry File was marked as Exhibit M-1 by consent of parties. Neither the workman nor the management adduced any oral evidence. It was agreed by both the counsels that the matter can be decided on merit instead of taking up the preliminary issue separately.

5. The following issues need to be answered for arriving at a final decision in the Industrial Dispute:-

(i) Whether the enquiry conducted against the workman is fair, proper and legal following principles of natural justice?

(ii) Whether the finding of the Enquiry Officer is based on legal evidence?

(iii) Whether the punishment imposed on the workman is proportional to the charges proved against him?

6. **Issue No. 1**

The management Bank vide order No. AW.DE.09.2013-14 dated 9th January 2014 issued a memorandum of charges against the workman alleging that the workman applied for the post of Bankman suppressing his educational qualification and falsifying the records for obtaining the job. The workman applied for the job of Bankman with full knowledge that he had passed SSLC Examination in March 2003. He was aware that he was not eligible to apply for job of Bankman as per the eligibility criteria prescribed by the Bank. The extract of Admission Register produced by him showing that he left the school in the year 2002 was also fabricated. Accordingly he was charged with gross misconduct of (1) knowingly making a false statement in any document pertaining to or in connection with his employment in the Bank, (2) doing any act prejudicial to the interest of the Bank. Shri Vinit V.P Manager HR was appointed as Enquiry officer and Shri Radhakrishnan Asstt. Manager was appointed as the Presenting Officer. The workman filed his reply dated 16-1-2004 admitting that he applied for the post of Bankman without reporting his qualification as SSLC passed. He also tendered unconditional apology for submitting wrong information for getting the employment. The disciplinary enquiry started on 12-2-2014. The Enquiry Officer read out the charges and explained the consequences to the workman. The workman was allowed to engage Shri Varghese A.K as Defence Representative. The management produced 3 witnesses on their side and all the witnesses were cross examined by the workman.

7. From the proceedings of enquiry, it is clear that the Enquiry Officer has afforded all the opportunities to the workman to disprove the charges against him. Defence Representative of his choice was allowed to participate in the enquiry on behalf of workman and they cross examined all the witnesses in the enquiry.

8. I don't find any infirmity in the process of enquiry conducted by the Enquiry Officer and the principles of natural justice was fully complied with in the process of enquiry. Hence the enquiry conducted against the workman is proper, legal and following the principles of natural justice.

Hence Issue No.1 is decided against the workman and in favour of the management.

9. Issue No. 2

In the year 2012, the management Bank started a process for recruitment of the Bankman. The eligibility criteria was that the candidate should have passed 7th standard but should not have passed SSLC or equivalent examination. In the application given by the workman which is marked as Exhibit M-1 in the enquiry, against 12th item of educational qualification, the workman declared that he has passed 7th standard from Holy Cross Convent, Thottakkattukara, Aluva. At the time of appointment, the workman has given a declaration dated 17-10-12 stating that he has studied upto 9th class and did not continue his education beyond 9th standard. Exhibit ME-4 is the extract of Admission Register issued by Head Master of St.Mary's High School Aluva stating that the workman left the school in the 9th standard on 10-7-2002 and the reason for leaving school is stated to be long absence. In Exhibit ME-6 which is a statement given by the workman dated 9-10-2013 to the Vigilance department admitting the fact that he passed SSLC Examination with 270 marks and he has also explained the modus operand by which he obtained Exhibit ME-4 extract of Admission Register. Exhibit ME-7 is the original Transfer Certificate issued by Head Master Sr.Mary's School, Aluva clearly indicating that the workman studied upto SSLC and passed SSLC in 2003. All the exhibits in the enquiry are proved through witnesses and the workman failed to pick any hose in the evidence of the management. Further Exhibit ME-6 is an admission by the workman that he qualified SSLC Examination in 2003 and the same fact was suppressed from the management Bank at the time of seeking employment with them.

10 Hence the evidence available in the enquiry fully support the conclusion arrived at by the Enquiry Officer, Disciplinary Authority as well as the Appellate Authority.

Hence Issue No. 2 is decided in favour of the management and against the workman.

11. **Issue No. 3**

The charges levelled against the workman and proved in the enquiry are of very serious nature. Submitting wrong declaration and false and fabricated documents for the sake of getting employment is a serious offence. The Apex

Court in many cases has pointed out that an applicant who obtains an employment through false declaration cannot continue in employment if the same is proved. In the present case, the case of the management is that the workman who passed SSLC Examination in 2003 declared that he passed 7th standard and produced documents to the effect that he discontinued his education at the level of 9th standard. It may be recalled that the qualification for a Bankman's job in the management Bank is 7th pass and has not passed SSLC Examination. Hence the declaration and the documents were fabricated to fit into this qualification and without verifying the veracity of the documents produced, the management appointed the workman in their service. Later, on the basis of a complaint, the matter was investigated and it was found that the declaration given by the workman was false and the documents produced by him are fabricated to suit his requirement. The learned counsel for the management relied on the decision of Hon'ble Supreme Court in **Kerala Solvent Extractions Limited V A.Unnikrishnan and another, 1994(2)LLJ 888**. The facts of the above case are exactly similar to that of the present one. In the above case also, the eligibility of appointment was that the educational qualification of candidates should not be more than 8th standard and the employee produced a certificate from the School Authorities to the effect that he had passed 7th standard on 15-5-1974. On the basis of the above certificate, he got an employment with the management. On receiving complaint regarding suppression of information, the management investigated the matter and found that the candidate passed 10th standard. The employee also admitted that he suppressed the information for the sake of employment. The Labour Court while deciding the matter held that acquisition of more qualification cannot be a disqualification for employment. The High Court dismissed the appeal filed by the management. While allowing the appeal, the Hon'ble Supreme court observed that

> " In recent times, there is an increase in evidence of this, perhaps well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the frame work of law and should not incur and justify criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

The dictum laid down by the Hon'ble Supreme court in the above case is applicable to the facts of this case. The argument of the counsel for the workman that over qualification cannot be a disqualification cannot be accepted in view of the above dictum.

12. The learned counsel for the management also argued on the basis of the Exhibit ME-1 in the enquiry file. Exhibit ME-1 is an application cum personal data form for the post of Bankman submitted by the workman. At Item No.8 of the general conditions in the above application, it is clearly stated that if any information furnished by the workman in the application is found to be false/ not correct/ misrepresented, their candidature is liable to be cancelled at any stage without notice. The learned counsel for the workman relied on the decision of Hon'ble Supreme court in **Kendriya Vidyalaya Sangathan V Ram Ratan Yadav, Civil Appeal No. 3266/2001** and **AP Public Service Commission V Koneti Venkateswarlu & others Civil appeal No. 5335/2005** to argue that any false declaration in the application form will disqualify the candidate to take up or continue an employment with the management.

13. Having considered the facts, circumstances and pleadings of this case, I am inclined to hold that the punishment awarded to the workman is proportional to the charges proved against him.

Hence the issue is answered against the workman and in favour of the management.

Hence an award is passed holding that the enquiry conducted against the workman is proper, legal and following the principles of natural justice and the punishment award to the workman is proportional to the charges proved against him and he is not entitled to any relief.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 5th day of September 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil

Exhibits for the Management:-

M1 - Enquiry File

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2159.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ त्रावणकोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 9/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of Travancore and their workmen, received by the Central Government on 10.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 18th day of October 2019, 26 Asvina 1941)

ID No. 9/2014

Workman : Shri Saleesh Kumar O.A,
S/o Ayyappan, Ottunga House,
Palapilly, Nalukettu P. O.
Koratty, Thrissur
Kerala - 680308.

By Adv. Ashok B.Shenoy

Management : The Deputy General Manager (IR),
State Bank of Travancore,
Head Office, Poojappura,
Thiruvananthapuram- 695012.

By Adv.Ramakrishnan

This case coming up for final hearing on 02-09-2019 and this Tribunal-cum-Labour Court on 18-10-2019 passed the following:

AWARD

1. This is an application filed by workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. According to the applicant, he was a workman in the management banking company. He was employed in the subordinate cadre as peon in the Koratty branch of the management Bank. He was employed in the service of Koratty branch from 24.03.2010. Since he has been employed, he was working continuously and regularly against the regular and

permanent vacancy. He had been discharging all the duties entrusted to him diligently and honestly. His services are terminated by the Manager of Koratty branch on 09.07.2011. The termination of the workman resorted to by the management amounts to retrenchment. Though the workman was employed continuously from 24.03.2010 to 09.7.2011, the management Bank has not issued notice of retrenchment to the workman nor paid the workman, wages in lieu of notice., as mandated by Sec 25F of Industrial Disputes Act, 1947. The management also did not pay the retrenchment compensation as mandated in Sec 25F of Industrial Disputes Act. Retrenchment of the workman is therefore illegal and unjust as also null and void in law. The retrenchment also violates the provisions in paragraphs 522, 523 and 524 of Sastri Award governing the management and the workman. Employees much junior in service to the workman are retained in service by the management in violation of mandatory provisions in Sec 25G of Industrial Disputes Act and Para 507 of Sastri Award. The management has employed fresh employees for the very same work for which the workman was employed, without affording an opportunity to the workman for re-appointment. This is a violation of Sec 25H of Industrial Disputes Act, clause 20.12 of 1st Bipartite settlement dt.19.10.1996 and 493 of Sastri Award. The management treated the workman as temporary workman against permanent vacancy to deprive him of the status and privilege of a permanent worker. Such practice on the side of the management amounts to unfair labour practice prohibited under Sec 25T of Industrial Disputes Act 1947 and violates 20.7 and 20.8 of 1st Bipartite settlement as also Para 495 and 522 of Sastri Award. The retrenchment of the workman is violation of clause 212 of 1stBipartite settlement under which the management is bound to pay and absorb the workman in regular service, especially when the vacancy in which he was employed is permanent and continues to exist.

3. According to the workman he is without any job or income since retrenchment from service of the Bank. Hence he pleads that his termination from 09.07.2011 may be declared illegal, unjust and be setaside. He also claims that he is entitled to reinstatement to service with full back wages, continuity of service and other attended benefits.

4. The management filed Written Statement denying the above allegations. The workman is not an employee of the management Bank. The workman's father Sri.O.P.Ayyappan was a peon in Koratty branch of the management Bank. Sri.Ayyappan died while in service on 19.03.2009. The Branch Manager of Koratty branch engaged the workman casually on daily wages and utilized his services for some additional work available in the branch as and when required. During the period from 25.03.2010 to 09.07.2011 there was another permanent peon in Koratty branch and there was no requirement of an additional peon on permanent basis. The management Bank is a state coming under the purview of Article 12 of the constitution. Hence appointment of employees can be done only after following the prescribed procedure for public appointment. Appointment in the peon category in the management Bank is done by inviting applications from public with prescribed qualifications and age limit and by conducting a selection process including test and interview. Another process through which appointments are made is by promoting eligible part time sweepers of the Bank. The workman was never appointed as an employee of the management Bank and the present attempt by the workman is to get a back door entry into the service of the bank. Since the service of an additional hand was not required, the management bank stopped engaging the workman on casual and daily wages. Since the engagement of the workman was casual there was no requirement of following the procedure for retrenchment under Industrial Disputes Act. Since the workman was not having continuous service, the provisions of retrenchment is not applicable to the workman. There is no additional work available to continue to engage a casual worker on daily wage basis. During the conciliation proceedings, the Assistant Labour Commissioner (Central) suggested that the workman may be allowed to participate in the selection process for part time sweeper. The management accepted the suggestion and accepted the application submitted by the workman belatedly and allowed him to participate in the selection process. He was ranked 28th in the selection list and could not be selected for appointment. The management denied the allegation that the workman was employed continuously and regularly against a regular and permanent vacancy and to do regular and permanent nature of duties. The allegation of the workman regarding termination on 09.07.2011 was also denied by the management. The management also denied that there was any violation of paragraph 522, 523,524 and 507 of Sastri Award. The management also denied that there is any violation of Clause 20.12 of the 1st Bipartite Settlement and Para 493 of Sastri Award. The management also denied any unfair labour practice U/s 25T of the Industrial Disputes Act. The claim of regularization cannot be decided in a proceedings U/s 2A (2) of the Industrial Disputes Act. The claim made by the workman is contrary to law laid down by the constitution bench of Hon'ble Supreme Court in **State of Karnataka Vs Umadevi**, 2006 (4) SCC 1.

5. The workman filed rejoinder denying the averments in the written statement filed by the management. The workman was employed by the management against permanent and regular vacancy of a peon to do and discharge permanent and regular duties of a regular peon continuously. There is no strict procedure for effecting appointments to the post of peon in the management bank either under law or any statute or by way of mandatory directions. The management bank appointed 107 employees in subordinate cadre in December 2011 other than through employment exchange or by public notification. This is done on the basis of an understanding between the management and State Bank of Travancore Employees Union. The management also appointed daily wage peons on a regular basis relaxing the age limit. The workman denied the claim of the management that procedure for retrenchment in Industrial Disputes Act

is not applicable. The decision reported in **Umadevi's case,** relied on by the management does not govern the present case and is not applicable to the present facts and circumstances of this case.

6. On completion of pleadings the workman was examined as WW1 and marked Exbts. W1 and W2. The management examined MW1 and marked Exbt. M1, M2 series (18 nos), W3 and W4 through the witness.

7. The following issues are framed for adjudication :

a. whether the action of the management in terminating the service of the workman from the service of the management bank w.e.f. 09.07.2011 is legal?

b. Whether the workman is entitled to be reinstated in service ?

c. Relief and cost?

8. Issue no.1 & 2

The case of the workman is that he was regularly and continuously employed to do regular and permanent nature of duties of a regular workman and his services were illegally retrenched in violation of provisions of Sec 25F, 25G and 25H of Industrial Disputes Act. As per the averment of the workman he was employed in the service of the Koratty branch of management bank from 25.3.2010. Though the fact of employment is denied by the management bank it is admitted by the MW1 that he was engaged by the bank on a casual and daily wage basis after the death of the father of the workman who was a regular peon in Koratty branch of the management bank. Exbt.M1 also sufficiently proves the engagement of the workman from 24.03.2010 as the first payment towards 4 days wages at the rate of Rs.150/- is paid to the workman on 27.03.2010. The management failed to produce all the vouchers for payment made to the workman during his service with the management bank. However Exbts.M2 series along with Exbt.M1 will substantially establish the fact that the workman was being engaged intermittently by the management bank on daily wages. Having confirmed the engagement of the workman by the management the next question to be answered is whether there is any valid proof regarding his termination from the service of the management bank. As in all such cases of termination of services of daily wage workers, in this case also there is no letter of appointment or termination. However the workman discharged his burden of proof by proving through documentary evidence that he worked with the management bank from 24.03.2010 to 9.7.2011. Once the workman succeeded in establishing his engagement, it is upto the management to prove that he had no continuous service under Sec 25B(2) of Industrial Disputes Act, as held by Hon'ble High Court of Kerala in **Regional Manager, Bank of Baroda Vs K.Shoba**, 2016 1 LLJ 139. As per Sub sec (2) of Sec 25B of Industrial Disputes Act, where a workman is in continuous service within the meaning of Clause 1 for a period of one year or 6 months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the day with reference to which calculation is to be made has actually worked under the employer for not less than 240 days. In this case, according to the management, the workman never had a continuous service since he never worked for 240 days prior to stoppage of his engagement by the bank. On a perusal of Exbt.M1 it can be seen that the workman was engaged by the management bank for 260 days from 27.03.2011 to 26.03.2011. However as per the provisions of Sec 25B(2) the first relevant date is the date of termination of service. According to the workman the date of termination is 09.07.2011. Hence the workman should have worked for 240 days with in a period of 12 months prior to this cut off date for claiming the benefit of Sec 25B(2). According to the management the workman was engaged by the management bank only for 219 days from 10.07.2010 to 09.07.2011. Exbt. M1 will support the case of the management that the workman was not engaged for 240 days in 12 calendar months prior to his alleged termination on 09.07.2011. Having failed to establish that the workman worked for 240 days continuously in one calendar year immediately before his alleged termination, the deeming fiction enacted in subsection 2A cannot be invoked to decide that the workman was in continuous service of the management bank. Once the workman failed to establish his continuous service with the management bank, he cannot claim the benefit under Sec 25F, 25G and 25H of Industrial Disputes Act 1947.

9. Hence issue no.1 & 2 are decided against the workman and in favour of the management.

10. Issue no.3

In view of the decision in Issue no.1 & 2 above, the workman is not entitled to be reinstated in service and therefore not entitled to any relief claimed by the workman.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 18th day of October 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman -

WW-1 – Workman Shri.Saleesh Kumar O.A on 8-4-2016

Witness for the Management -

MW-1- Shri Vijayakumar V.V on 8-11-2016

Exhibits for the workman:-

W-1	-	Application dt.28-11-2012 of workman for conciliation filed before ALC.
W-2	-	Certificate dt. 23-1-2014 issued by ALC under Section 2-A of ID Act.
W-3	-	Letter dt.17-12-2009 of Bank addressed to workman returning his application for compassionate appointment.
W-4	-	Letter dt.28-6-2011 of Dy.General Manager to workman.

Exhibits for the Management:-

M1-	Statement of accounts relating to sundry account maintained by Bank for period 23-3-2010 to 9-7-2011
M-2 , 2(a)	18 cash vouchers effecting payment to workman
to 2(q)	between period from 23-3-10 to 9-7-2011.

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2160.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 16/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ernakulam as shown in the Annexure, in the industrial dispute between the management of Federal Bank Ltd. and their workmen, received by the Central Government on 10.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Thursday, the 5th day of September 2019, 14th Bhadra 1941)

ID No. 16/2011

Workman	:	The General Secretary, Federal Bank Employees Union, Central Office, Alwaye, Kerala.
		By Adv. C. Anil Kumar
Management	:	The Chairman, Federal Bank Ltd., Head Office, Alwaye, Kerala
		By M/s. B.S. Krishnan Associates

This case coming up for final hearing on 20-6-2019 and this Tribunal-cum-Labour Court on 5th day of September passed the following :-

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/02/2011-IR(B-II) dated 1-6-2011 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is

"Whether the action of the management of Federal Bank in imposing the penalty of compulsory retirement with superannuation benefits on Shri M.Y.Joseph, Typist-cum-clerk vide their order dated 18-1-2010 is legal and justified? To what relief the workman is entitled?"

3. According to the Union, the workman joined the service of the Bank on 1-11-1981. While working as Typist clerk at P & S department of the Head Office of the management Bank, the workman was issued with a charge memo dated 20-9-2008 alleging (1) willfully slowing down in the performance of work, (2) doing acts prejudicial to the interest of the Bank and (3) neglect of work/ negligence in performance of duty. The allegations against the workman is that he had willfully delayed the work allotted to him thereby causing inconvenience to branches. He was reluctant to learn the work allotted to him and he was committing mistakes in the supply notes. He was not present in his seat on many occasions during working hours and his behavior towards his superiors, peers and subordinates were not cordial. The Enquiry Officer who conducted enquiry was totally biased against him and was acting under instructions from the Higher officials of the management. There was flagrant violation of principles of natural justice and fairness. The Enquiry Officer also intervened in the process of cross examination of management witness. The enquiry officer was infuriated against the workman because he sent a letter addressed to the Enquiry Officer. Two witnesses were examined from the side of the management. The workman himself gave a statement before the Enquiry Officer. There is no reliable evidence to show that he was slow in doing his work from September 2007 onwards. Not even a single memo was given to him alleging that he is slowing down the work after September 2007. Some of the documents used against him were prepared behind his back. Hence the workman had no opportunity to verify the entries created in the records without his knowledge. It is not correct to say that he was doing only specified work as mentioned in the Exhibits. The copies of the crucial files produced by management were not shown to him at the appropriate time. There is no dependable evidence on the side of management to prove that huge arrears of work was kept pending by the workman. The management completely failed to prove that alternate arrangements were made to complete the pendency of the workman. The performance of the workman was compared with one Shri K.T.Poulose. However K.T.Poulose's performance was not available before the Enquiry Officer. Exhibit ME-3 was marked in the enquiry without affording the workman an opportunity to go through the file. There is absolutely no evidence corroborating the allegation that the workman committed mistakes while doing entries. No complaint from the branches regarding the mistakes in the data entry was produced by the management to substantiate their case. The allegation regarding absence of the workman in his work place on many occasions are very wild and unsubstantiated. No explanation was called from the workman for his absence from his seat during office hours or unusual toilet habits. There is no truth in the allegation that the workman had strained relationship with officers and colleagues. The department in which the workman was working had no dealing with customers and hence the allegation regarding complaints from customers is not based on any evidence. It is true that a disciplinary action was initiated against the workman some 15 years back. After that incident, there was not even a single memo issued against the workman. Without looking into these factors, the Disciplinary Authority accepted the finding of the Enquiry Officer and imposed a penalty of dismissal from service vide order dated 31-10-2009. The punishment is too harsh and disproportionate to the charges alleged to have been proved against the workman. The Appellate Authority instead of exonerating the workman converted the punishment into compulsory retirement with superannuation benefits.

4. The management filed Written Statement denying various allegations. The management issued a memo to the workman dated 20-9-2008 while he was working at Printing and Stationary Department. The charges leveled against him include (a) failure to perform various duties allotted to him,(b) willful delay of works allotted to him, (c) keeping the works pending which in turn affected the functioning of the department, (d) causing inconvenience to the branches which had requested stationary items from the Department and (e) frequently leaving from his seat without proper reasons and loitering around the Department. Since his joining in the department, it was noticed that the workman was not properly attending the works allotted to him, showed a non-cooperative attitude which adversely affected the working of the Department and the Branches. There was huge arrears of work piling up in his task and the departmental officers advised him to improve his performance. From February 2008 to July2008, the workman was slowing down the performance. The workman was found to have made mistakes in the supply notes for B & C stationary items to various branches by not entering many of the items required by the branches which caused inconvenience to branches. The workman was not found in his seat on many occasions during working hours and loitering around the department on the pretext of going to toilet. This affected the performance of the department. The behavior of the workman with his superiors and colleagues

were reported to be very strained and he used to make grave mistakes in his work. The workman was having a past record of non-performance when he was working in legal department. Departmental action was initiated against him which culminated in stoppage of increment for a period of 3 years. The enquiry was conducted in a fair and judicial manner observing principles of natural justice. The management witnesses were cross examined by the workman and he fully participated in the enquiry. The Enquiry Officer submitted the enquiry report with the finding of guilty on the part of the workman. Concurring with the findings of the Enquiry Officer, the Disciplinary Authority imposed a punishment of dismissal from service. The Appellate Authority found no reason to interfere with the order of the Disciplinary Authority but he considered the financial position and family background of the workman, as urged by him in the personal hearing and reduced the punishment to that of compulsory retirement with superannuation benefits.The workman was given all the opportunity in a fair and proper manner to defend his case. The Disciplinary Authority accepted the findings of the Enquiry Officer and considered all the relevant factors before imposing the punishment of dismissal. The Appellate Authority re-appreciated the evidence, considered the submissions made by the workman and found that there is no mitigating circumstances to interfere with the findings and the order passed by the Disciplinary Authority. However the Appellate Authority reduced the punishment to compulsory retirement with superannuation benefits. The punishment imposed by the Appellate Authority is just, legal, proper and proportionate to the charges proved against the workman. However if the enquiry is found to be vitiated in any manner, the management may be given an opportunity to prove the charges before the Tribunal.

5. The Union did not file any rejoinder to the written statement filed by management.

6. On completion of pleadings, the Enquiry Officer was examined as MW-1 and the enquiry file (5 volumes) are marked as Exhibit M-1, M-1(a) to M-1(d). Towards conclusion of hearing, the management also marked Exhibit M-2, M-3, M-4 & M-5 by consent. The issue regarding the validity of enquiry was taken up as preliminary issue and vide order dated 19-2-2015, this Tribunal found the enquiry conducted against the workman valid and legal.

7. Having decided the preliminary issue in favour of the management, the following issues are framed for final adjudication-

(1) Whether the finding of the Enquiry Officer is based on legal evidence?

(2) Whether the punishment imposed on the workman is proportionate to the charges proved against the workman?

(3) To what relief the workman is entitled to?

8. The acts of misconduct alleged against the workman were (1) wilful slowing down in performance of work, (2) doing acts prejudicial to the interest of the Bank and (3) neglect of work/ negligence in performance of duties. The management produced voluminous evidence to substantiate the charge of willfully slowing down the performance of work by the workman. The basic work entrusted to the workman are entry of the intents received from the branches for supply of stationary. According to the evidence available, other works of intermittent nature were also allotted to him. With regard to the main work allotted to the workman, the management to certain extent succeeded in proving that the workman was slow in performance of his duties compared to another employee who was working in the same section. The crucial documents in the Enquiry File relating to this charge is that of Exhibit ME-1 and ME-2. Exhibit ME-1 is a report dated 27-5-2008 given by Shri M.J.Antony, Manager to Asstt.General Manager, PIR department regarding the performance of the workman. Exhibit ME-2 is another report dated 6-8-2008 given by Shri Antony and M.K.Varghese to the AGM, PIR department. Exhibit ME-2 in the enquiry file is the main basis for the issue of chargesheet of willful slowing down in performance of work. These reports are based on a diary maintained by those officers which is marked as Exhibit M-1(a) in this proceeds. Exhibit M-1(a) is a document where the performance of the workman is entered in the Division from 28-2-2008 to 19-7-2008. This diary also indicates the time when the workman left his seat on each day of his attendance and when he return to the seat. As rightly argued by the counsel for the workman, Exhibit M-1(a) diary was maintained behind the back of the workman and hence the correctness of the data cannot be confirmed. The manner in which Exhibit M-1(a) is introduced in the enquiry is also under challenge. According to the counsel for the workman, comparing the performance of the workman who joined the department 6 months back with another employee who was working in the department for the last 25 years is also not proper and correct. According to him, the workman never received any correcting memos at any point of time during the period he was in the department. Though MW-1 & MW-2 stated in the enquiry that there were complaints against the workman from the co-workers and also superiors, there is absolutely no evidence to that effect adduced by the management. According to the counsel for management, there is adequate evidence, oral as well as documentary to support the case of the management that the workman was deliberately slowing down his work. The voluminous documents produced in the enquiry such as M-1(b), (c) & (d) will clearly show that the performance of the workman was far below the performance by his colleague in the department.

9. Going by the evidence, adduced in the enquiry, I don't have any hesitation in holding that the Charge No.1 of slowing down the performance of work is substantially proved by the management. The counsel for the management raised an issue regarding **willful slowing down in performance** i.e. to say whether the slowing down was deliberately done by the workman. Though the question whether the workman **willfully and deliberately delayed his performance** is not fully substantiated by the management, the evidence as discussed above indicate that the performance of the workman was not upto the mark.

10. With regard to the 2nd allegation of doing acts prejudicial to the interest of the Bank, there is no much evidence other than certain allegations such as quarrelling with superiors and fighting with customers such as Printers of the Bank. Even the finding by the Enquiry Officer donot give any insight into the reasons for such finding. Exhibit M-1 Enquiry Report dated 30-6-2009, Exhibit M-1 is also not clear as to how the Enquiry Officer arrived at the conclusion that the 2nd charge is proved against the workman. As per the enquiry report in Exhibit M-1,

> "In the instant case it has been deposed by both the witnesses that the habit of keeping the work pending and irregular execution of work has affected the smooth functioning of the department thereby arising complaints from the branches. The witnesses who were superiors of CSE have deposed that CSE was in the habit of quarrelling with the printers and other customers of the departments including with his co-workers. Though no written complaints are relied upon, I donot find any reason to disbelieve the oral evidence of two witnesses who were found forceful and reliable in the deposition. I find that the above conduct on the part of CSE was definitely against the interest of the department he is working and also amounts to the misconduct of doing any act prejudicial to the interest of the Bank and I hold him guilty accordingly."

It is clear from the Enquiry Report that the Enquiry Officer relied exclusively on the deposition made by the two management witnesses who filed written complaints to the management against the workman. The Enquiry Officer also relied on the earlier punishment awarded to the workman in an earlier disciplinary action. Considering the fact that the 2nd charge is also a major penalty action, is it reliable to consider the oral evidence of those two witnesses who sent reports against the workman which is a genesis of disciplinary action against him. Hence it is difficult to accept the finding of the Enquiry Officer with regard to the 2nd charge that the workman acted prejudicial to the interest of the Bank.

11. With regard to the 3rd charge of neglect of work/ negligence in performance of duties, it can be seen that there is absolutely no evidence to support the charge. Even the finding of the Enquiry Officer that " the CSE discharged his duties and the quality of work generated by him as born out by the documentary/ oral evidence demonstrate that CSE was not diligent in discharging the duties and executing the work. CSE being a typist clerk having 25 years of experience in Bank cannot take recourse saying that he has only limited experience in the department. Both MW-1 and MW-2 were assertive in their deposition about their repeated advice given to CSE to improve the quality of work executed by him. I am of the view that the above acts/ omissions on the part of CSE amount to neglect of work/ negligence in performance of duty and I hold him guilty accordingly". With regard to this charge also, it is clear that the Enquiry Officer has relied only on the oral evidence of the two management witnesses who send adverse reports against him that they adviced the workman to improve his quality of work. In the normal course, it is but normal that corrective memos are issued to a delinquent staff to improve his performance so that the improvement of his performance can be monitored at every stage of his performance. Unfortunately in this case, both the superior officers failed in their effort and it is difficult to accept at this point of time that they were advising the workman orally to improve his performance. It is difficult to accept the finding of the Enquiry Officer against this charge also for the reasons stated above.

12. In view of the above, I am inclined to hold that the finding of the Enquiry Officer with regard to the Ist charge is partially supported by evidence to the effect that there was slow down in performance and the finding of the Enquiry Officer with regard to Charges 2 & 3 are without any supporting legal evidence.

13. Issue No. 2

It is seen that the Disciplinary Authority has awarded the maximum punishment of dismissal from service without notice for the charges alleged to be proved against the workman. On his appeal to the Appellate Authority, the punishment was modified to compulsory retirement with superannuation benefits vide order dated 18-1-2010.

14. The learned counsel for the management relied on various decisions by the Apex Court to substantiate his view that having found the enquiry proper and legal, this Tribunal shall not interfere with the punishment imposed on the workman as the same is the prerogative of the Disciplinary Authority and the Appellate Authority. The counsel relied on the decision of **Mani Lal Vs Matchless Industries of India WP(C)314/2012** wherein the Hon'ble High Court of Delhi held that resorting to go slow is a serious misconduct which warrants stronger punishments. The facts of the above case are not relevant to the present case because the decision refers to a go slow by the workers in a factory where as in the present case, it is a question of giving lower output by the workman compared to another employee. The learned counsel for the management also relied on decision of **Management of Bharat Heavy Electricals Vs M.Mani , CDJ 2017(SC)1245** & **Chairman and Managing Director, United Commercial Bank and others Vs. P.C.Kakkar 2003(4) SCC 364** and **Regional Manager, UPSTRC Vs Hotilal 2003(3) SCC 605** to assert that the powers of this

Tribunal in interfering with the quantum of punishment is restricted. In this case, the workman was not handling any sensitive work which involves cash or customers as understood in the banking business. The workman was typist cum clerk in the stationary department where his job was to enter the indents received from the branches in the computer apart from some other distributed work. His only customers are the people who supplies stationary and the printers . Though there is an allegation of rude behavior by the workman towards one printer, the same is not substantiated in the enquiry. The only charge that is substantially proved is that he was slow in his performance compared to one of his colleagues. When we come to the question of evaluating the quantum of punishment, we may have to look into the charges that is proved during the course of the enquiry. The Hon'ble Supreme Court in **Bharat Heavy Electricals Vs M.Mani** (supra) observed that

> "In our opinion, once the Labour court upheld the departmental enquiry as being legal and proper, then the only question that survive for consideration before the Labour court was whether the punishment of dismissal imposed by the Appellant to the respondent was legal and proper or it requires any interference in its quantum.
>
> In other words, the Labour court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondent was, in any way, disproportionate to the gravity of the charges levelled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Dispute Act 1947."

As pointed out by the Hon'ble Supreme Court, the powers of this Tribunal is confined to decide whether the punishment imposed on the workman is proportionate to the charges proved against him. As pointed out in the earlier paras, the only charge that is proved against the workman in this proceedings is the slowing down in his performance. Even the question of willful or deliberate slowing down is not proved in the enquiry. The counsel for management also raised the issue of an earlier disciplinary action initiated against the workman which ended in the penalty of barring 3 increments with cumulative effect. Even if we take into count the punishment of barring 3 increments with cumulative effect in December 1996, the capital punishment of compulsory retirement from the service of the Bank is shockingly disproportionate to the charges proved against the workman.

15. Considering all the facts and circumstances explained above, I am of the considered view that the punishment awarded to the workman is shockingly disproportionate to the charges proved against the workman.

16. Issue No. 3-

Having found that the finding of the Enquiry Officer with regard to charges 2 & 3 are not supported by legal evidence, the right course of action would be to remand the case back to the Disciplinary Authority to decide the appropriate punishment to be awarded to the workman. It is seen that the workman is send on compulsory retirement with superannuation benefits vide order dated 18-1-2010. By sending back the issue to the disciplinary Authority the injustice to the workman would be further delayed. The counsel for the workman submitted during the course of argument that the workman is hardly left with 2 years of service for retirement. Taking into account all the facts and circumstances , pleadings and evidence on record, I hold it proper that the workman be reinstated in service without backwages but with continuity of service. Further a penalty of barring two increments with cumulative effect shall be imposed on the workman for the proved misconduct of slowing down his performance.

In view of the above, the reference is answered holding that the penalty of compulsory retirement with superannuation benefits on the workman vide order dated 18-1-2010 is illegal and not justified. The workman is to be reinstated in service without backwages but with continuity of service. His two increments is barred with cumulative effect for the charge proved against him.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 5th day of September 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil

Exhibits for the Management:-

M1	-	Enquiry File (Book No.1)
M-1(a)	-	Enquiry File (Book No.2)
M-1(b)	-	Enquiry File (Book No.3)
M-1(c)	-	Enquiry File (Book No.4)
M-1(d)	-	Enquiry File (Book No.5)
M-2	-	Order dated 1-11-1994 passed by Disciplinary Authority
M-3	-	Final order dated 17-12-96 passed by Disciplinary Authority
M-4	-	Order dated 24-3-97 passed by the Appellate Authority
M-5	-	Award dated 15-12-2003 in ID No.49/98 by CGIT Ernakulam

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 47/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 प्राप्त हुआ था।

[सं. एल-12012/50/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.47/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.12.2019.

[No. L-12012/50/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 30th day of September 2019, 8 Asvina 1941)

ID No. 47/2013

Workman	:		Smt. Sreekumari M. Karthika, House No. VIII/140, PO Kumaranallor, Kottayam- 686016 By Adv. Vinod Madhavan
Management	:	1.	The Dy.General Manager (B&O) Appellate Authority, State Bank of India, Disciplinary Proceedings Cell, Administrative Office, LMS Compound, Trivandrum – 695033.

2. Regional Manager(Disciplinary Authority),
State bank of India,
Regional Business Office,
Thirunakkara,
Kottayam – 686001.
By Adv. George Thomas Mevada

This case coming up for final hearing on 30-7-2019 and this Tribunal-cum-Labour Court on 30-9-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/50/2013-IR(B-I) dated 14-10-2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the punishment of dismissal from services imposed on Smt. Sreekumari. M by the management of State Bank of India is proportionate to the misconduct committed by her? To what relief the worker is entitled?"

3. The worker filed claim statement after entering appearance. The worker joined the service of the management Bank on 08.11.1978. She was working as Senior Assistant at Thirunakkara branch of the management Bank from 10.12.2007 to 30.01.2010 and as Senior Special Assistant at Kottayam branch from 30.01.2010 to 26.08.2012. The worker was placed under suspension from 27.08.2010 pending initiation of disciplinary enquiry under clause 11 of Bipartite Settlement dt.10.04.2000. She was issued a show cause notice dt. 21.04.2011 proposing action for gross misconduct under clause 5 (j) of Bipartite Settlement. The main allegation in the show cause notice was that she availed various demand loans and overdrafts jointly and severely in the name of her husband, son and herself without sufficient security. The worker denied the above allegation and pointed out that she was only a Senior Assistant who cannot sanction loans and the loans are sanctioned by competent officers after satisfying eligibility requirements. Another allegation in the show cause notice was that the worker arranged for issue of multiple term deposit receipts opened jointly and severely in the name of her husband , son and herself, so as to arrange multiple loans in their names. This allegation is also denied by the worker stating that the loans were sanctioned by competent officers after following established banking procedures and practices. Further it was alleged that at the request of the worker lien was noted in favour of M/s.Kerala State Financial Enterprises on deposit lying with the bank. According to the worker alternate security was provided when the anomaly was noticed by her. It was further alleged that the current over drafts against bank deposits in her name as well as jointly in the name of her spouse were overdrawn far exceeding the sanctioned limit. This was also denied by the worker stating that she had no powers to authorize excess drawings. It was a case of the worker that no irregularity was pointed out by the audit in many of the above transactions and the bank suffered no loss whatsoever. The Enquiry Officer appointed to enquire in to the allegations found that all the above charges were proved against the worker. However there was no finding regarding any financial loss to the bank or misappropriation of funds belonging to the management Bank. There was no finding by the Enquiry Officer regarding any wilful malpractice committed by the worker. There was no finding by the Enquiry Officer regarding any illegal sanction of Demand Draft or Overdraft in respect of amounts availed by the worker. Without properly appreciating the facts and evidence of the case, the Disciplinary Authority accepted the findings of the Enquiry Officer and imposed a penalty of dismissal from the service of the bank without notice. The appeal filed by the worker was also dismissed by the Appellate Authority. The entire proceedings by the management and the Enquiry Officer are vitiated and in violation of the principles of natural justice. The findings of the Enquiry Officer are perverse and unsustainable. The punishment awarded is shockingly disproportionate to the alleged misconduct stated to have been proved against worker.

4. The management filed written statement denying the above allegations. According to the management Smt.Sreekumari.M, the worker, while working as Special Assistant at Thirunakkara branch from 10.12.2007 to 30.01.2010 and as Senior Special Assistant at Kottayam branch from 30.01.2010 to 26.08.2012 committed serious irregularities and acts of misconduct. Hence a charge sheet dt. 21.04.2011 was served on the worker on 26.04.2011. The charges leveled against the worker were very serious and are as follows.

1. That she availed various demand loans/overdrafts jointly and severely in her name and with her husband and son from Thirunakkara and Kottayam branches of the management bank without sufficient security. When the said irregularities were detected, she had availed 4 demand loans and 4 CA overdrafts aggregating to Rs.57 lakhs as against her Term Deposit Receipt valued at Rs.24 lakhs.

2. That she had arranged for the issuance of multi term deposit receipts against the same term deposit accounts jointly/severely in her name and in her husband's /son's name, to facilitate availing of multiple loans against same term deposit receipts.

3. She arranged to get the Term Deposit Receipts closed, wherein lien in favour of M/s.Kerala State Financial Enterprises Ltd (KSFE) was still current, and there by exposed the bank to contingent liability to the extent of her outstanding liability towards the KSFE.

4. That the 9 Current Overdraft accounts in the name of the applicant worker as well as in the joint name of her husband were overdrawn far exceeding the sanctioned limits on several occasions.

Since the explanation submitted by the worker to the above charge sheet were not satisfactory the management Bank ordered Departmental Enquiry against her on 20.05.2011. The worker participated in the enquiry assisted by her authorized representative. The management witness were examined in her presence and she was given opportunity to cross examine the witness. The worker was also given opportunity to lead evidence in support of her defence. The enquiry was conducted in a fair and proper manner and after taking in to account the evidence on record and arguments advanced on either side the Enquiry Officer came to the conclusion that all the charges alleged against the worker are true. The Disciplinary Authority after examining the records and evidence accepted the findings of the Enquiry Officer and communicated the proposed action to the worker vide letter dt.23.01.2012. She was also given a personal hearing on 07.02.2012. Taking in to consideration all the facts, circumstances and findings of the enquiry, the Disciplinary Authority issued an order dt.15.02.2012 imposing a punishment of dismissal without notice on the worker in terms of Clause 6(a) of the Memorandum Settlement on Departmental Action Procedure. The appeal preferred by the worker was also rejected by the Appellate Authority holding that, in banking business an employee holds a position of trust and betrayal of trust will result in erosion of confidence of the depositors/ public in banks.

5. The Hon'ble Supreme Court in **Division Controller, KSRTC Vs A.T. Mane**, (2005) 3 SCC 234 held that the loss of confidence shall be the primary factor and not the amount of money misappropriated. It is further held by the Courts that it is wrong to show any sympathy or generosity in favour of erring workman or interference in the punishment awarded on the ground of no loss to the bank. The enquiry was held in a fair and proper manner and in accordance with the principles of natural justice. The punishment awarded to the worker is proportionate to the gross misconduct committed by the worker.

6. The worker did not file any rejoinder though opportunities were granted to her for the same.

7. On completion of pleadings on 14.10.2014 the matter was taken up for preliminary enquiry on 23.04.2015. The matter was adjourned on many occasions at the request of the management for the production of enquiry file. The enquiry file was finally produced on 30.12.2016. The management went on seeking adjournments for examining the Enquiry Officer and finally the Enquiry Officer was examined on 26.05.2017. The enquiry file was marked as Exbt.M1. The marking of Exbt. M1 was objected to by the Counsel for the worker on the ground that it is only a photocopy and many of the documents are missing. The matter was further adjourned on various occasions for hearing the preliminary issue of legality of the enquiry. The Counsel for the workman submitted that the enquiry file was marked subjected to objection and on the condition that complete files will be produced by management. According to him the management has not produced complete files of enquiry and on the request of the management, the hearing was adjourned many times because the management failed to produce the original files of enquiry. On 12.03.2019, the Counsel for the management submitted that the original enquiry file could not be located and the matter was finally adjourned to 26.03.2019 for preliminary hearing. There was no representation for management on 26.03.2019 when the matter was taken up for preliminary hearing. Since the management failed to produce the enquiry file, the preliminary issue regarding validity of enquiry was decided in favour of the workman and against the management. After the orders were issued on the preliminary issue, the Counsel for the management filed an IA for reopening the hearing. Since the order on preliminary issue was already issued and the management even at this stage failed to produce complete enquiry file, the IA to re-opening the matter for hearing was rejected. When the matter was finally posted for hearing on 08.07.2019 there was no representation for the management. However in the interest of justice the matter was adjourned to 29.07.2019 finally for hearing and it was also ordered that this is one of the oldest case pending before this Tribunal and no further adjournments will be given. Again the management sought time and the matter was adjourned to 30.07.2019 and the Counsel for the worker submitted argument notes. Though the Counsel for the management was granted 3 weeks time to submit the argument notes, no argument notes were submitted on behalf of the management.

8. Having completed the pleadings and evidence, the following issues are framed for final decision.

1. Whether the enquiry is conducted in fair and proper manner and following the principles of natural justice?

2. Whether the findings are supported by legal evidence?

3. Whether the punishment awarded is proportionate?

4. The relief ?

9. **Issue no. 1**

The validity of the disciplinary enquiry was taken up as a preliminary issue. The Enquiry Officer was examined as MW1 and the enquiry file was marked as EXbt.M1 subject to objection by the Counsel for the worker. During the course of examination of MW1 before this Tribunal, he submitted that Exbt.M1 contains a copy of the enquiry report and photocopies of some proceedings. However he made it very clear in this preposition that " the charges leveled against the worker cannot be proved through oral evidence alone. It can be proved through documents only. None of the 82 documents produced in the enquiry are available in Exbt,M1.". To another question by the counsel for the worker, MW1, replied that the letter dt.16.11.2011 from the Chief Manager along with the enclosures seen in Exbt. M1 file is not part of the enquiry file. In view of the above evidence by MW1, it is very clear that the file produced by the management as enquiry file is only a failed attempt to reconstruct the enquiry file with the enquiry report and some other photocopies. Though the management was given another opportunity to produce the original enquiry file, the Counsel for the management after many adjournments submitted that the original and complete enquiry file could not be located.

10. This is a matter of serious concern particularly for an institution involved in banking business. The allegations in the charge memo against the worker are of very serious nature. The documents produced in the enquiry are all documents in the normal course of banking transactions in the bank. However, surprisingly, the enquiry file pertaining to such a serious enquiry is misplaced by the management when the disciplinary action and the orders issued are under challenge before this Tribunal. It is for the management to look into these matters.

11. The non-production of enquiry file is a serious lapse on the part of the management. In the absence of the enquiry file it is not possible to decide whether the enquiry is conducted in a fair and proper manner. Hence the worker will get the benefit of doubt. In view of the above, the preliminary issue whether the enquiry is conducted in a fair and proper manner is answered against the management, and is favour of the worker vide order dt.15.05.2019.

12. **Issue no. 2 & 3**

Having failed to produce the enquiry file, the management is expected to raise a question of additional evidence to be adduce before the Tribunal. The Counsel for the worker argued that in view of the decision of the constitutional bench of the Hon'ble Supreme Court in **Karnataka State Road Transport Corporation Vs Lakshmidevamma,** 2002 KHC 247 the management ought to have raised the request for additional evidence while filing written statement itself. The Hon'ble Supreme Court in the above case observed that;

> "We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions".

The above decision was followed by Hon'ble High Court of Kerala in **President, Edayar Ksheerolpadana Sahakarana Sangham Vs Industrial Tribunal, Alappuzha,** 2007 (2) KHC 200.

13. In this particular case there was no request in the written statement filed by the management for adducing any additional evidence. There was no plea by the management seeking permission to adduce additional evidence even after the preliminary issue of validity was decided against the management. In view of the above there is no reason to decide whether the management is entitled to adduce any additional evidence in this case.

14. The learned Counsel for the worker argued that in view of the decision by the Hon'ble Supreme Court in **Neeta Kaplish Vs Presiding Officer Labour Court** , 1999 (1) KHC 919 when enquiry report is setaside as not valid, there is no material evidence on record before this Tribunal to decide the proportionality of punishment or other issues in the matter. In the above referred case, the Hon'ble Supreme Court observed that;

> "This contention has not been accept by Labour Court and the enquiry has been held to be bad. In view of nature of objections failed by the appellant, the record of enquiry held by the management seems to be "material on record" with in the meaning of Sec 11A of the Act and the only cause open to the management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the management has to suffer the consequences".

15. Having rejected the enquiry report and since the management failed to adduce any fresh evidence, there is no evidence before this Tribunal to support the charges leveled against the worker.

Hence the issue no.2 & 3 are decided in favour of the worker and against the management.

16. **Issue no. 4**

In view of the findings in issue no.1, 2 & 3, the reference is answered in favour of the worker. The punishment of dismissal from service imposed on the worker by the management of State Bank of India is not fair and proper. She is entitled to be reinstated in the service of the bank with continuity of service. However taking in to account the special circumstance of the case she is not entitled for back wages.

Hence an award is passed holding that the punishment of dismissal from service imposed on Smt. Sreekumari. M by the management of State Bank of India is not fair and proper and is not proportionate to the misconduct proved against her. She is entitled to be reinstated in the service of the bank with continuity of service but without back wages.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 30th day of September, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the worker	-	Nil
Witness for the Management	-	MW1, K. Shanker 26.05.2017
Exhibits for the worker	-	Nil
Exhibits for the Management	-	M1 (Enquiry file)

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2162.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 32/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/26/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.12.2019.

[No. L-12011/26/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the25thday of September 2019, 3 Asvina 1941)

ID No. 32/2014

Workman : Ex-Servicemen SecurityStaffAssociation,
Thirumangalath House, Kozhukkallur PO
Meppayur Via
Kozhikode – 673524.
By Adv.P.K. Madhusoodhanan

Management : The Chief General Manager,
State Bank of India,
Local Head Office, Thambanur,
Thiruvananthapuram.
By Adv.Reynold Fernandez.N

This case coming up for final hearing on 23-7-2019 and this Tribunal-cum-Labour Court on 25-9-2019 passed the following;

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/26/2014-IR(B-I) dated 3-6-2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of the management of State Bank of India in not considering the temporary guards for regularization in permanent posting is justified? If not, to what relief they are entitled?"

3. The Union entered appearance and filed their claim statement. The Union is representing the workman who were engaged as Armed Guards/ watchman in State Bank of India in various branches of Kozhikode District in Kerala. All the members of Union are Ex-Servicemen discharged from Army, Navy or Airforce after full colour service of 17 years. The Central Government issued instructions that all vacancies reserved for Ex-servicing in subordinate cadres in Group C & D shall be filled up only from among Ex-Servicemen sponsored by Zilla Sainik Boards/ Directorate General (re-settlement) . As per State Bank of India Instructions, the method of selection of subordinate staff will be based on the norms prescribed by the Bank. As per normal practice, those who have worked temporarily will be considered for regularization in preference to others. But the management of the Bank did not appoint any Ex-Servicemen as Security Guard from the year 2005 to 2011 inspite of the fact that there were clear vacancies. The management Bank engaged the members of the Union on daily basis after collecting the list of eligible persons from the Zilla Sainik Board and conducted interview at the Bank's level. At the time of their engagement, the workmen were fully eligible and fit for the post and within the age stipulated by the Bank. As per rules, 20 % of the vacancies in Group D posts including permanent vacancies filled initially on temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for 3 months or more are to be filled by direct recruitment from Ex-Servicemen. As per Rule-5 of the amendment in Ex-Servicemen (Re-employment in Central Civil Service Post) Rules 1979, issued by Notification dated 4-10-2012of the Government of India, Ministry of Personnel, Public Grievance and Pensions, New Delhi which is applicable to State Bank of India for appointment of Group C & D posts, an Ex-Servicemen shall be allowed age relaxation deducting the period of actual military service from his actual age and if the resultant age doesnot exceed the maximum age limit prescribed for the post for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit. The Union herein is representing the claim of 7 employees whose name is included in the claim statement. Even though the above employees were paid daily wages according to their engagement, the employees were employed against regular, permanent and existing posts and they were paid wages and other benefits considering them as temporary employees, directly by the management Bank. All the claimants are eligible with required qualification to be recruited as permanent watchman under the management Bank. All these claimants were recruited by State Bank of India before completion of 45 years of age. As pointed out earlier, the claimants are entitled for age relaxation and qualified to be regularized to the post from the date of recruitment. It is usual practice of the Bank to put artificial break in service of the workers to show that the workers have not completed 240 days of continuous service within a span of 12 continuous months. This practice of the management amounts to unfair labour practice as envisaged under the provisions of ID Act and this artificial break will not in any way dis-entitle the workers to claim regularization as held by various decisions of the Hon'ble Apex Court. It is also pointed out that the recruitment rules of the Bank will not stand in the way of the workmen getting permanent appointment in view of the provisions of ID Act and the various judgments of the Apex Court and also the High Courts. The action of the management in not rehabilitating the ex-servicemen by regularizing them in service is illegal, unfair and amounts to unfair labour practice. The workers were appointed as temporary armed guards considering their competency. They were recruited after interview and considering their physical fitness and experience. Though the nomenclature is temporary Armed Guards, the workmen were working in permanent and regular posts and the work is of perennial nature. The workmen has a right to claim regularization after completion of 240 days of continuous service within a span of 12 continuous months. The recruitment rules of Bank will not stand in any way of workman getting permanent status in view of the provisions contained in the ID Act. All the employees of this Union were working with the management Bank prior to the cut off date of 2-11-2011 and hence fixation of cut off date is against norms. All the employees have secured employment not by back door methods and the normal recruitment process through Regional/ District Sainik Boards were followed before appointing them as Armed Security Guards. The members of the Union who are appointed by the Bank were below the

age of 45 years when they were appointed and they crossed the age limit after securing employment and serving the management for long period. Hence they are having the right and liable to be regularized and resettled without any age restriction.

4. The management entered appearance and filed Written Statement denying the above averments. According to the management, the workmen represented by the claimants are not permanent employees of the management. The Hon'ble Supreme Court of India in Uma Devi's case, (2006)4SCC-1 and Somvir Singh Case (2006)5 SCC-493 held that a temporary employee donot hold a post and the temporary service will not entitle a person to get regularization in service. The Secretary of Union had approached the Hon'ble High Court of Kerala through several writ petitions seeking permanent absorption in the service of the Bank and also for considering them for employment to the vacancies to which application for selections were advertised. The management couldnot accept the request as the workmen were Ex-Servicemen above the age of 45 years as on the relevant cut off date, and the Notification prescribed the age below 45 years to be considered for appointment as Armed guards as per the recruitment rules. The Hon'ble High Court of Kerala in the judgments rendered in Writ Appeals 64,65 of 2014 and 545/2013 upheld the stand of the management. The Hon'ble High court of Kerala further held that the Government of India is to be addressed to get any relaxation in age limit prescribed as per rules. The recruitment rules of the management Bank are framed as per the guidelines and directions issued by the Ministry of Finance. According to the recruitment rules, the maximum age limit prescribed for Armed Guards is 45 years. The workmen in this case are bound by the decision of the Hon'ble High Court of Kerala in Writ Petitions No. 26105/2011 and 3061/2012 and WP No. 21737/2013 and Writ Appeal Nos 545/2013 and 65/2014. All the decisions in the above case will operate as res judicata. The post of Watchman/ Armed Guard in the management Bank are exclusively reserved for Ex-Servicemen. The workmen claiming through the Union were in casual temporary vacancies engaged in the Bank as per the list provided by the Zilla Sainik Welfare Office, Trivandrum. The workmen were engaged as substitutes in casual and temporary vacancies that arose on difference occasions in various Banks. They were never clearly recruited in the Bank. The workmen were never given assurance regarding their absorption as a Bank employee. They had never undergone any selection process like physical test or interview before they were temporarily recruited. Workmen who filed a representations for relaxation of upper age limit are infact estopped from contending that the stipulation of age limit is not binding on them. The issue whether an averaged Ex-Servicemen can be absorbed in the Bank was canvassed in the above referred writ petitions and the relief claimed by the workmen were declined by the Hon'ble High Court. The recruitment process by the management Bank was conducted as per the existing guidelines framed on the basis of the directives issued by the Central Government and the Hon'ble High Court of Kerala has upheld the decision of the management through various judgments. The contention of the Union that the workman were engaged continuously by the management Bank is denied by the management. The qualification prescribed for the post of Armed Guards is passing 8th standard or its equivalent but should not have passed 10+2 exam or equivalent as stipulated in Clause 5(g) of the guidelines. The maximum age ceiling of Armed Guard is governed by clause 5(f) of the guidelines. According to clause 5(f), for recruitment of Security Guards, ex-service men are entitled to relaxation in age ceiling in full, to the extent of service in the Armed forces and 3 years in addition thereto**, subject to the maximum age ceiling of 45 years**. The said stipulation is based on Government of India guidelines. The age limit of 45 years is fixed for recruitment for ensuring efficiency and physical fitness for effective discharge of duties attached to the post of Armed Guards. As per Section 18 of State Bank of India Act of 1955 under which the State Bank of India is constituted, the Bank is required to be guided by the directions of Central Government.

5. In the recruitment process conducted by the management Bank in the year 2011, the Bank rejected the biodata of temporary substitute watchman who had crossed 45 years as on the cut off date fixed by the Bank. This was challenged in the High Court by filing Writ Petitions Nos.26105/2011 & 3061/2012. Even the Secretary of the Union who participated in the selection process for the year 2010 could not get through in the selection process. All the writ petitions challenging the recruitment process were dismissed by the Hon'ble High Court by a common judgment holding that the Bank cannot give any relaxation in the upper age limit and any such modification could be made only by Government of India since it is a policy decision. However the Hon'ble High Court while deciding the petition observed that the workman can approach appropriate authority either in the Bank or in the Central Government to seek for modification for recruitment against future vacancies. The representation submitted by the workmen to the Bank were rejected as only Government of India is competent to modify the upper age limit. The Writ Appeal No. 545 of 2013 filed against the above judgments was also dismissed. Pursuant to the judgments and during the pendency of writ appeals, the workmen approached the Assistant Labour Commissioner who stayed the selection process for the year 2013. The management challenged the order in Writ Petition 21153/2013. The Union filed Writ Petition No. 21737/2013 to restrain the management Bank from doing the selection process. WP No. 22055/2013 was filed praying for a direction to the ALC to issue instruction to the management Bank to give permanent appointment to Ex-Servicemen. All the above writ petitions were disposed off by a common order quashing the order passed by the ALC and directing the petitioners in WP 21737/2013 & WP.22055/2013 to approach the Central Government for modification of the upper age limit. The writ appeals preferred from the above judgments were also disposed off by a common order by the Hon'ble high Court of Kerala in Writ Appeal No. 65/2014 upholding the view of the Single Bench that the workmen will have to approach the Central Government to seek relaxation of the upper age limit. The Hon'ble High Court suomoto impleaded the Union of

India represented by its Secretary, Ministry of Defence, New Delhi as additional respondent and directed Government of India, Ministry of Defence to take a decision within 3 months from the date of receipt of the copy of the judgment.

6. None of the claimants are entitled to get regularized as they have all exceeded 45 years as on the relevant cut off date for selection. The mere fact that they were employed temporarily before attaining the age of 45 years will not entitle them to get permanant service. It is the prerogative of the management to decide when the recruitment process shall be initiated and how many posts will have to be filled up through direct recruitment. The management never exposed the workman to any kind of unfair labour practice. The workmen were not given further duty as temporary watchman as new recruits lawfully recruited joined service and there were no more vacancies against which the workman could be considered for any casual engagement.

7. The allegation that the management Bank gave artificial break to prevent the workers from completing 240 days of service in span of 12 calendar months is denied by the management. The question regarding the guidelines framed in the light of instructions issued by Union of India cannot be challenged directly or indirectly in this reference as the validity of the same is settled by the Hon'ble High Court of Kerala.

8. The Union filed rejoinder denying the allegation in the Written Statement filed by management. The main issue to be considered in this case is whether the claimants has a valid dispute which is required to be adjudicated and whether the non-regularisation of the claimant and their retirement is bad in law. The Hon'ble Supreme Court in 2006(5)SLR-SC held that employees who had worked for atleast 240 days in a calendar year and had not attained the age of superannuation is eligible for regularization. In WP(C) 8520/2011 & connected cases, the Hon'ble High Court of Kerala has clarified that it is open to the petitioners to approach the appropriate authority either in the Bank or the Central Government to seek for such modification and to seek recruitment against permanent vacancies arising in future. **They will be also at liberty to seek regularization on the strength of temporary service put in**. The Hon'ble High Court also observed that if the petitioners approaches with such requests, the same shall be considered taking note of the fact that Ex-Servicemen need special consideration in the matter of rehabilitation and settlement. The present case is regarding the appointment of claimants against regular post those are temporary. The denial of regularization and illegal retrenchment of Ex-Servicemen from the Ex-Servicemen quota are unfair labour practice by the management. The claimants were appointed by the management Bank only after verification of physical fitness, educational qualifications, age etc. As per the amended Rule(4)(5)(a) of Ex-Servicemen (Re-employment in Central Civil Services and Posts)Rules 1979 notified by the Government of India, Ministry of Personnel Public Grievance, New Delhi, for Group C and Group D posts in Central Government, an Ex-Servicemen shall be allowed to deduct the period of actual military service from his actual age and **if the resultant age doesnot exceed the maximum age limit prescribed for the post** for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit. This rule provision was never contested by the Government or any of the Agencies before any court of law. The existing vacancies with the management Bank shall be filled up in accordance with law existing on the date of occurrence of vacancies. The workman were appointed against regular post in permanent vacancies. In the normal course, they used to be regularized and absorbed in the service of the management Bank. Even now the associate banks of State Bank of India follow that policy. The present management itself has regularized the service of Shri Valsalan, S/o Anandan at the age of 52 years at the time of his regularization following his temporary service. In the selection conducted by the management Bank in 2011, some of the otherwise eligible claimants participated but were deliberately rejected by the management Bank. The claimant workman were denied regularization since the management Bank failed to conduct any recruitment since 2006 to 2011, though there were existing vacancies. As per the guidelines of Sainik Board, once an Ex-Servicemen is terminated, it is the duty of the employer to inform the Sainik Board within 90 days. This was not done by the management Bank. It is very clear from the averments in Para 12 & 13 of the written statement that the workmen were retrenched without following the relevant provisions of law as a retaliation for seeking regularization against post in which they were working. The dictum laid down by the Hon'ble supreme Court in **Uma Devi's Case and Somavir Singh's Case** Supra is not applicable to the present case as there was no back door entry which was a relevant point of consideration in those cases. The claimant workman were appointed by the management Bank against the existing regular vacancies after conducting interview and after being satisfied with the educational qualification and physical fitness. Management has no case that the claimant workman were not eligible, incompetent or unfit to hold the post at the time of their initial appointment.

9. On completion of pleadings, the Union examined WW-1 and WW-2 as their witness and marked Exhibits W-1 to W-8. Union completed their evidence by 12-4-2016. Inspite of specific directions, the management kept on seeking adjournments for examining their witness till 6-2-2019, when the management witness MW-1 was examined and Exhibit M-1 to M-4 were marked. The management wanted to examine one more witness. The matter was adjourned to 12-3-2019 and finally to 26-8-2019 for further evidence. On 26-8-2019, there was no representation for the management when the matter was finally posted for evidence of the management. Since this is one of the oldest pending cases in this Tribunal, the evidence of management was closed and the matter was posted for hearing. Further, the matter was posted on 9-5-2019 for hearing, the Union filed argument notes and the management prayed for time for hearing and was finally adjourned to 2-7-2019. On 2-7-2019 also, the management sought time for filing argument notes and it was finally posted

to 23-7-2019. Again management sought adjournment for filing argument notes which was rejected and the counsel for the Union was heard.

10. Having completed the pleadings and evidence, the following issues are framed for final decision-

(i) Whether the action of the management in not considering the temporary guards for regularization in permanent post is justified?

(ii) Relief and Costs?

11. **Issue no. 1**

According to the Union, the claimants in the industrial dispute were appointed as Security Guards by the management Bank against temporary vacancies during the period from 2005 to 2009 when there was no direct recruitment of Security Guards in the Bank. The counsel for the Union argued that as per the existing rules and instructions, the claimants are required to be settled by regularizing them as Security Guards/ watchman. All the claimants were eligible to be appointed as regular Security Guards in the management when they were inducted into the service of the management Bank as temporary Security Guards. As per the then prevailing practice, those security guards who were appointed on temporary basis are regularized against permanent vacancies. However the claimants were not considered for regularization in the management Bank. In the year 2011, the management initiated the process for recruiting Security Guards against permanent vacancies. The claim of the Union was not considered by the management on the ground that they crossed the age limit of 45 years as on the cut off date. According to the Union, taking a cut off date for people who are employed on temporary basis is irrelevant.

12. The Union also pleaded that the claimants herein has completed 240 days of continuous service within a span of 12 calendar months and they are entitled to be regularized as per various decisions of the Apex Court.

13. Hence it can be seen that the Union has claimed regularization on two independent grounds. Ist being that they are entitled for relaxation in age limit as per the existing rules and 2nd ground pleaded is that they have continuously worked for 240 days with the management Bank and they are entitled for regularization.

14. With regard to the claim of age relaxation for appointment, the management has taken a view that the same issue was considered by the Hon'ble High Court of Kerala in various cases and has finally held that the Union or its members has no claim for regularization relaxing the age limit as per recruitment rules of the management Bank. It is seen that the above issue has come up before the Hon'ble High Court through various writ petitions and was finally disposed off vide order dated 11-10-2012 in Writ Petition (C) .No.9961/2011. In this case, the Hon'ble High Court considered whether the petitioners are entitled to be considered for appointment against Armed Guards in the management Bank. The common issue reiterated in the above said writ petitions regarding the rejection of candidature of the applicants on the ground that they crossed the age limit of 45 years as on the last date of submission of the application. As per the guidelines issued by the management Bank for recruitment of Armed Guards, on the basis of circulars issued by Government of India, the selection has to be made from Ex-servicemen candidates already working in the temporary service of the Bank and also from among the candidates sponsored by the District Zilla Sainik Welfare Boards. As per Section 5(f) of the Comprehensive Instructions, Ex-Servicemen are entitled for age ceiling relaxation to the extent of full service in Armed Force and 3 years in addition thereto subject to the maximum age ceiling of 45 years. The Hon'ble High Court rejected the claim of the petitioners holding that " this Court cannot hold that the petitioners are entitled to be selected in the process of recruitment against permanent vacancies which is made through prescribed selection process on the basis of certain guidelines. Therefore the challenge against rejection of candidature on the basis of crossing upper age limit cannot be sustained."

15. Though the above writ petitions were dismissed, the Hon'ble High Court gave liberty to the petitioners to approach the appropriate authorities to claim regularization in service of the Bank or in seeking further modification of guidelines providing relaxation in upper age limit. The Hon'ble High Court also gave liberty to the petitioners **seeking regularization on the strength of temporary service put in by them.**

16. On the basis of the above observations, the petitioners moved to the Assistant Labour Commissioner (C) seeking a direction to the management Bank for regularization in service of the temporary Security Guards. When the proceedings were pending before the ALC, the management Bank notified 170 vacancies of Armed Guards in various branches within Kerala circle to be filled up through direct recruitment. The temporary Security Guards who moved the ALC(C) filed an application for restraining the management Bank from going through the recruitment and the ALC issued an order restraining the management Bank from going ahead with recruitment. This decision also ended up in lot of writ petitions before the Hon'ble High Court of Kerala. All these writ petitions were disposed off by a common order in Writ Petition No. 21153 of 2013. In this order also, the Hon'ble High Court considered whether the persons employed as temporary guards could be made permanent on the basis of the various demands made by the Ex-Servicemen. The Hon'ble High court rejected the claim for regularization and reiterated its earlier view that they will have to approach the Central Govt. to seek relaxation of upper age limit. Writ Appeals No. 64,65,66 of 2014 filed from the above order was

also dismissed by the Hon'ble High Court vide its order dated 10-1-2014. In the Writ Appeals, the Hon'ble High Court suomoto impleaded the Union of India, Ministry of Defence and issued a direction that the representation of the Ex-Servicemen shall be considered and an appropriate decision shall be taken within 3 months time.

17. The Union in this industrial dispute has come up with a case that Government of India, Ministry of Personnel , Public Grievance and Pensions vide its Notification dated 4-10-2012 has amended the Ex-Servicemen, (Re-employment in Central Civil Service and Posts) Rules 1979. According to Rule-4 of the amendment, Rule 5regarding the age was substituted by Rule 5(a) . Substituted Rule-5(a) reads as follows-

> "For appointment to vacancies in Group B(Non-Gazetted), Group C or Group D posts in Central Government, an Ex Servicemen shall be allowed to deduct the period of actual military service from his actual age and **if the resultant age doesnot exceed the maximum age limit prescribed for the post for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit**."

18. Along with Exhibit M-3 dated 8-11-1990, the management Bank also produced a document dated 15-3-2013 titled Re-employment of Ex-Servicemen- utilization of experience. This is supposed to be a reply given to a Rajya Sabha Question by the Defence Ministry. According to this, the departmental or Financial Services which is the nodal deptt. for Public Sector Banks and Insurance companies have issued instructions extending benefit of seniority and age relaxation to Ex-servicemen on re-employment. The extract from Indian Bankers Association Brochure of guidelines for Public Sector Bank is also annexed there to. At para-2.2 of the annexure with regard to age, the age relaxation as provided in the Ministry of Personnel amendment in Ex-Servicemen(Re-employment in Central Civil Service and Posts) Rules 1979 is incorporated. However the stand taken by the management Bank is that the instructions issued by the Bank as on 8-11-1990 continues to be the same and unless the instructions is amended by the Bank, the question of age relaxation cannot be considered.

19. Considering all the above facts, it is felt that the question regarding age relaxation for appointment/ regularization of the members of the Union has already been concluded by the various judgments of Kerala High Court discussed above and the only option available to the Union will be to pursue the petition given to Government of India to issue directions to amend the age relaxation rules of State Bank of India in line with the amended Ex-Servicemen(Re-employment in Central Civil Service and Posts) Rules 1979.

20. Another ground on the basis of which the Union claimed regularization is that they worked for 240 days as Security Guards in a calendar year. According to the Union, all the claimants in the ID are directly recruited by the management Bank after getting a list from the District Sainik Welfare Board. All the claimants are qualified to be appointed as Security Guards and they were also physically fit for the said job. The appointment was given after an interview conducted by the management Bank. All these posts are of perennial nature and salary was being paid by the management Bank directly. Though the fact of continuous employment for 240 days in a calendar year was denied by the management, there was no serious contention against the other claims made by the Union. In the evidence adduced by MW-1, the witness specifically denied that none of the claimants of the Union completed 240 days of employment in a calendar year. He has also stated that after the recruitment of regular watchman in the year 2010, none of the claimants in the Union were retained in job. He has also admitted that the claimants were working in a job of perennial nature and they have also worked as substitutes against regular employees. As per Exhibit W-2 dated 25-1-2013 issued by the management Bank, Shri Gopinathan T, Secretary of the Union worked with the management Bank even after 2010. It is seen that he worked for 308 days from 24-6-2011 to 31-12-2012. For the period 1-1-2012 to 31-12-2012, he worked for 249 days. This document is not denied by the management. Hence it can be seen that Shri Gopinathan T, Secretary of the Union worked for a period of 249 days during a calendar year from 1-1-2012 to 31-12-2012. When MW-1 was cross-examined on Exhibit W-2, he stated that he is not aware that Shri Gopinathan worked for 249 days continuously during the year 2012. However he clarified that normally temporary security guards are not engaged beyond 240 days in a calendar year. The Union also pointed out a precedent of Shri C.Valsalan who worked as Security Guard for 92 days and who was 52 years of age and was regularized in the service of the management Bank. Exhibit W-6,7& 8 supports the said case of the Union. The management witness when cross-examined on this, stated that he is not aware of the circumstances under which Shri C.Valsalan was regularized in the service of the management Bank. Management's witness MW-1 also agreed that temporary Security Guards are taken into service after an interview by Branch Manager. He also agreed that this suitability and fitness of the workman are evaluated before their recruitment as temporary Security Guards.

21. Going by the above evidence on the side of the Union as well as the management, it is very clear that the claimants were directly recruited by the management Bank after evaluating their fitness and educational qualification and conducting an interview by the Manager. It has also come out in evidence that these employees were working in a job of perennial nature and they were performing their work against retirement vacancies and also as substitutes.It is also true that the salary of these employees were being paid by the management Bank directly. The evidence adduced by the Secretary of the Union clearly shows that WW-1 worked for 249 days in the calendar year 1-1-2012 to 31-12-2012. As per Section 25 B(2) of Industrial Disputes Act, where a workman is not in continuous service within the meaning of

clause (1) for a period of one year, he shall be deemed to be in continuous service under the employer for a period of one year, if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to bemade has actually worked under the employer for not less than 240 days. Since the Union succeeded in proving that WW-1 satisfies the requirement of Section 25(B), his retrenchment from service without following the procedure under Section 25-F of ID Act 1947 is illegal. The status with regard to the continuous employment of the other claimants are not available in the proceedings and hence it is not possible to conclusively decide whether they are entitled for the protection under ID Act.

22. In the case of **Keshav Narayan Gupta and others V Jila Parishad, Shivpuri (MP) and others, 1998(9)SCC-78**, the Hon'ble Supreme Court considered question whether temporary employees who continue for long period of service are entitled for regularization in service. The Hon'ble Supreme Court directed the management to continue the employees in temporary service on adhoc basis and regularize them as and when the vacancy arise. In the case of **State of Himachal Pradesh V Suresh Kumar Verma and others, 1996(7)SCC 562** the Hon'ble Supreme Court directed the Government to regularize the service of the temporary employees relaxing the age limit since the petitioners became over aged by the time of recruitment. The counsel for the Union also pointed out the decision of Hon'ble supreme Court in **Food Corporation of India V General Secretary FCI Employees Union and FCI V workmen in Civil Appeal Nos 10499/2011 and Civil appeal No. 10511/2011**. In this case also the Hon'ble supreme Court considered the question whether the action of the management of Food Corporation of India in denying to regularize 955 contract labourers engaged in the FCI Godown through TBK Cooperative Society is justified. On the basis of the evidence before the Industrial Tribunal, the Hon'ble Supreme Court held that these employees are entitled for regularization.

23. In view of the facts and evidence discussed above, it is very clear that the claimants of the Union were appointed by the management Bank directly against permanent vacancies and their work is of perennial nature and salary was being paid directly by the management Bank. As already stated above, WW-1 has already put in 240 days of continuous service in a calendar year and his retrenchment without following the procedure prescribed under the ID Act is illegal. Going by the dictum laid down by the Hon'ble Supreme Court in above cases, the claimants of the Union who completed 240 days of continuous work are entitled to be reinstated in service of the management Bank and are entitled to be regularized.

Hence the issue is answered in favour of the Union and against the management.

24. Issue No. 2

As stated in the above paras, the retrenchment of the claimants of the Union who put in 240 days of continuous service without following the procedure prescribed under ID Act is irregular and illegal. All the claimants who have put in 240 days of continuous service shall be reinstated in service as temporary employees with immediate effect without backwages and regularized in service as and when future vacancies arise in the management Bank.

25. In view of the above, an award is passed that the action of the management of State Bank of India in not considering the temporary guards for regularization is illegal and unjustified. Management is directed to reinstate all the claimants who have put in 240 days of service as temporary Security Guards but without backwages and regularize them in service as and when future vacancies arise.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of September 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman -

WW-1 - Shri Gopinathan T on 22-2-2016

WW-2 - Shri P.P.Sarasan on 12-4-2016

Witness for the Management -

MW-1 - Shri GijiT.Jacob on 6-2-2019

Exhibits for the workman -

W-1 - Copy of certificate issued to Shri Gopinathan dt.21-3-11

W-2 - Copy of certificate issued to Shri Gopinathan dt.25-1-13

W-3 - Copy of letter dated 4-2-2013 of Union addressed to the ALC, Kakkanad.

W-4 - Copy of order regarding re-employment of Ex-Servicemen.

W-5 - Copy of order dated 20-12-2013 passed in WA No.65 of 2014

W-6 - Copy of Ex-Servicemen ID Card issued to ShriValsalan

W-7 - Copy of Certificate regarding working of Shri Valsalan in Bank.

W-8 - Copy of appointment order dated 27-7-96 issued to Shri Valsalan

Exhibits for the Management:-

M-1 - Copy of order dated20-12-2013 in WP No. 21153 of 2013

M-2 - Copy of order dated 10-1-2014 in WA No. 65 of 2014

M-3 - Copy of Staff Circular No. 29(90-91) dated 8-11-1990

M-4 - Copy of order dated11-10-2012 in WP No. 9961 of 2011

नई दिल्ली, 10 दिसम्बर, 2019

का. आ. 2163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 31/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/27/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th December, 2019

S.O. 2163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.12.2019.

[No. L-12011/27/2014-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 25th day of September 2019, 3 Asvina 1941)

ID No.3 1/2014

Workman : All Kerala Ex-servicemen Security
Staff Association of BSNL, Karthika,
Thottada PO, Edakkad Village,
Kannur (Kerala)-1.
By Adv. P.K.Madhusoodhanan

Management : The Chief Manager,
State Bank of India,
Kannur Main Branch, Fort Road,
Kannur (Kerala)-1.
By Adv.Reynold Fernandez.N

This case coming up for final hearing on 27-7-2019 and this Tribunal-cum-Labour Court on 25-9-2019 passed the following;

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/27/2014-IR(B-I) dated 3-6-2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of the management of State Bank of India in not considering the temporary guards for regularization in permanent posting is justified? If not, to what relief they are entitled?"

3. The Union entered appearance and filed their claim statement. The Union is representing the workman who were engaged as Armed Guards/ watchman in State Bank of India in various branches in the State of Kerala. All the members of Union are Ex-Servicemen discharged from Army, Navy or Airforce after full colour service of 17 years. The Central Government issued instructions that all vacancies reserved for Ex-servicing in subordinate cadres in Group C & D shall be filled up only from among Ex-Servicemen sponsored by Zilla Sainik Boards/ Directorate General (re-settlement) . As per State Bank of India Instructions, the method of selection of subordinate staff will be based on the norms prescribed by the Bank. As per normal practice, those who have worked temporarily will be considered for regularization in preference to others. But the management of the Bank did not appoint any Ex-Servicemen as Security Guard from the year 2005 to 2011 inspite of the fact that there were clear vacancies. The management Bank engaged the members of the Union on daily basis after collecting the list of eligible persons from the Zilla Sainik Board and conducted interview at the Bank's level. At the time of their engagement, the workmen were fully eligible and fit for the post and within the age stipulated by the Bank. As per rules, 10 % of vacancies in Group C and 20 % of the vacancies in Group D posts including permanent vacancies filled initially on temporary basis and temporary vacancies which are likely to be made permanent or are likely to continue for 3 months or more are to be filled by direct recruitment from Ex-Servicemen. As per Rule-5 of the amendment in Ex-Servicemen (Re-employment in Central Civil Service Post) Rules 1979, issued by Notification dated 4-10-2012 of the Government of India, Ministry of Personnel, Public Grievance and Pensions, New Delhi which is applicable to State Bank of India for appointment of Group C & D posts, an Ex-Servicemen shall be allowed age relaxation deducting the period of actual military service from his actual age and if the resultant age doesnot exceed the maximum age limit prescribed for the post for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit. The Union herein is representing the claim of 14 employees whose name is included in the claim statement. Even though the above employees were paid daily wages according to their engagement, the employees were employed against regular, permanent and existing posts and they were paid wages and other benefits considering them as temporary employees, directly by the management Bank. All the claimants are eligible with required qualification to be recruited as permanent watchman under the management Bank. All these claimants were recruited by State Bank of India before completion of 45 years of age. As pointed out earlier, the claimants are entitled for age relaxation and qualified to be regularized to the post from the date of recruitment. It is usual practice of the Bank to put artificial break in service of the workers to show that the workers have not completed 240 days of continuous service within a span of 12 continuous months. This practice of the management amounts to unfair labour practice as envisaged under the provisions of ID Act and this artificial break will not in any way dis-entitle the workers to claim regularization as held by various decisions of the Hon'ble Apex Court. It is also pointed out that the recruitment rules of the Bank will not stand in the way of the workmen getting permanent appointment in view of the provisions of ID Act and the various judgments of the Apex Court and also the High Courts. The action of the management in not rehabilitating the ex-servicemen by regularizing them in service is illegal, unfair and amounts to unfair labour practice. The workers were appointed as temporary armed guards considering their competency. They were recruited after interview and considering their physical fitness and experience. Though the nomenclature is temporary Armed Guards, the workmen were working in permanent and regular posts and the work is of perennial nature. The workmen has a right to claim regularization after completion of 240 days of continuous service within a span of 12 continuous months. The recruitment rules of Bank will not stand in any way of workman getting permanent status in view of the provisions contained in the ID Act. All the employees of this Union were working with the management Bank prior to the cut off date of 2-11-2011 and hence fixation of cut off date is against norms. All the employees have secured employment not by back door methods and the normal recruitment process through Regional/ District Sainik Boards were followed before appointing them as Armed Security Guards. The members of the Union who are appointed by the Bank were below the age of 45 years when they were appointed and they crossed the age limit after securing employment and serving the management for long period. Hence they are having the right and liable to be regularized and resettled without any age restriction.

4. The management entered appearance and filed Written Statement denying the above averments. According to the management, the workmen represented by the claimants are not permanent employees of the management. The Hon'ble Supreme Court of India in Uma Devi's case, (2006)4SCC-1 and Somvir Singh Case (2006)5 SCC-493 held that a temporary employee donot hold a post and the temporary service will not entitle a person to get regularization in service. The Secretary of Union had approached the Hon'ble High Court of Kerala through several writ petitions seeking

permanent absorption in the service of the Bank and also for considering them for employment to the vacancies to which application for selections were advertised. The management couldnot accept the request as the workmen were Ex-Servicemen above the age of 45 years as on the relevant cut off date, and the Notification prescribed the age below 45 years to be considered for appointment as Armed guards as per the recruitment rules. The Hon'ble High Court of Kerala in the judgments rendered in Writ Appeals 64,65 of 2014 and 545/2013 upheld the stand of the management. The Hon'ble High court of Kerala further held that the Government of India is to be addressed to get any relaxation in age limit prescribed as per rules. The recruitment rules of the management Bank are framed as per the guidelines and directions issued by the Ministry of Finance. According to the recruitment rules, the maximum age limit prescribed for Armed Guards is 45 years. The workmen in this case are bound by the decision of the Hon'ble High Court of Kerala in Writ Petitions No. 26105/2011 and 3061/2012 and WP No. 21737/2013 and Writ Appeal Nos 545/2013 and 65/2014. All the decisions in the above case will operate as res judicata. The post of Watchman/ Armed Guard in the management Bank are exclusively reserved for Ex-Servicemen. The workmen claiming through the Union were in casual temporary vacancies engaged in the Bank as per the list provided by the Zilla Sainik Welfare Office, Trivandrum. The workmen were engaged as substitutes in casual and temporary vacancies that arose on difference occasions in various Banks. They were never clearly recruited in the Bank. The workmen were never given assurance regarding their absorption as a Bank employee. They had never undergone any selection process like physical test or interview before they were temporarily recruited. Workmen who filed representations for relaxation of upper age limit are infact estopped from contending that the stipulation of age limit is not binding on them. The issue whether an overaged Ex-Servicemen can be absorbed in the Bank was canvassed in the above referred writ petitions and the relief claimed by the workmen were declined by the Hon'ble High Court. The recruitment process by the management Bank was conducted as per the existing guidelines framed on the basis of the directives issued by the Central Government and the Hon'ble High Court of Kerala has upheld the decision of the management through various judgments. The contention of the Union that the workman were engaged continuously by the management Bank is denied by the management. The qualification prescribed for the post of Armed Guards is passing 8th standard or its equivalent but should not have passed 10+2 exam or equivalent as stipulated in Clause 5(g) of the guidelines. The maximum age ceiling of Armed Guard is governed by clause 5(f), of the guidelines. According to clause 5(f) for recruitment of Security Guards, Ex-Servicemen are entitled to relaxation in age ceiling in full, to the extent of service in the Armed forces and 3 years in addition thereto**, subject to the maximum age ceiling of 45 years**. The said stipulation is based on Government of India guidelines. The age limit of 45 years is fixed for recruitment for ensuring efficiency and physical fitness for effective discharge of duties attached to the post of Armed Guards. As per Section 18 of State Bank of India Act of 1955 under which the State Bank of India is constituted, the Bank is required to be guided by the directions of Central Government.

5. In the recruitment process conducted by the management Bank in the year 2011, the Bank rejected the biodata of temporary substitute watchman who had crossed 45 years as on the cut off date fixed by the Bank. This was challenged in the High Court by filing Writ Petitions Nos.26105/2011 & 3061/2012. Even the Secretary of the Union who participated in the selection process for the year 2010 could not get through in the selection process. All the writ petitions challenging the recruitment process were dismissed by the Hon'ble High Court by a common judgment holding that the Bank cannot give any relaxation in the upper age limit and any such modification could be made only by Government of India since it is a policy decision. However the Hon'ble High Court while deciding the petition observed that the workman can approach appropriate authority either in the Bank or in the Central Government to seek for modification for recruitment against future vacancies. The representation submitted by the workmen to the Bank were rejected as only Government of India is competent to modify the upper age limit. The Writ Appeal No. 545 of 2013 filed against the above judgments was also dismissed. Pursuant to the judgments and during the pendency of writ appeals, the workmen approached the Assistant Labour Commissioner who stayed the selection process for the year 2013. The management challenged the order in Writ Petition 21153/2013. The Union filed Writ Petition No. 21737/2013 to restrain the management Bank from doing the selection process. WP No. 22055/2013 was filed praying for a direction to the ALC to issue instruction to the management Bank to give permanent appointment to Ex-Servicemen. All the above writ petitions were disposed off by a common order quashing the order passed by the ALC and directing the petitioners in WP 21737/2013 & WP.22055/2013 to approach the Central Government for modification of the upper age limit. The writ appeals preferred from the above judgments were also disposed off by a common order by the Hon'ble high Court of Kerala in Writ Appeal No. 65/2014 upholding the view of the Single Bench that the workmen will have to approach the Central Government to seek relaxation of the upper age limit. The Hon'ble High Court suomoto impleaded the Union of India represented by its Secretary, Ministry of Defence, New Delhi as additional respondent and directed Government of India, Ministry of Defence to take a decision within 3 months from the date of receipt of the copy of the judgment.

6. None of the claimants are entitled to get regularized as they have all exceeded 45 years of age as on the relevant cut off date for selection. The mere fact that they were employed temporarily before attaining the age of 45 years will not entitle them to get permanent service. It is the prerogative of the management to decide when the recruitment process shall be initiated and how many posts will have to be filled up through direct recruitment. The management never exposed the workman to any kind of unfair labour practice. The workmen were not given further duty as temporary

watchman as new recruits lawfully recruited joined service and there were no more vacancies against which the workman could be considered for any casual engagement.

7. The allegation that the management Bank gave artificial break to prevent the workers from completing 240 days of service in span of 12 calendar months is denied by the management. The question regarding the guidelines framed in the light of instructions issued by Union of India cannot be challenged directly or indirectly in this reference as the validity of the same is settled by the Hon'ble High Court of Kerala.

8. The Union filed rejoinder denying the allegation in the Written Statement filed by management. The main issue to be considered in this case is whether the claimants has a valid dispute which is required to be adjudicated and whether the non-regularisation of the claimant and their retirement is bad in law. The Hon'ble Supreme Court in 2006(5)SLR-SC held that employees who had worked for atleast 240 days in a calendar year and had not attained the age of superannuation is eligible for regularization. In WP(C) 8520/2011 & connected cases, the Hon'ble High Court of Kerala has clarified that it is open to the petitioners to approach the appropriate authority either in the Bank or the Central Government to seek for such modification and to seek recruitment against permanent vacancies arising in future. **They will be also at liberty to seek regularization on the strength of temporary service put in**. The Hon'ble High Court also observed that if the petitioners approaches with such requests, the same shall be considered taking note of the fact that Ex-Servicemen need special consideration in the matter of rehabilitation and settlement. The present case is regarding the appointment of claimants against regular post. The denial of regularization and illegal retrenchment of Ex-Servicemen from the Ex-Servicemen quota are unfair labour practice by the management. The claimants were appointed by the management Bank only after verification of physical fitness, educational qualifications, age etc. As per the amended Rule(4)(5)(a) of Ex-Servicemen (Re-employment in Central Civil Services and Posts)Rules 1979 notified by the Government of India, Ministry of Personnel Public Grievance, New Delhi, for Group C and Group D posts in Central Government, an Ex-Servicemen shall be allowed to deduct the period of actual military service from his actual age **and if the resultant age doesnot exceed the maximum age limit prescribed for the post** for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit. This rule provision was never contested by the Government or any of the Agencies before any court of law. The existing vacancies with the management Bank shall be filled up in accordance with law existing on the date of occurrence of vacancies. The workman were appointed against regular post in permanent vacancies. In the normal course, they used to be regularized and absorbed in the service of the management Bank. Even now the associate banks of State Bank of India follow that policy. The present management itself has regularized the service of Shri Valsalan, S/o Anandan at the age of 52 years at the time of his regularization following his temporary service. In the selection conducted by the management Bank in 2011, some of the otherwise eligible claimants participated but were deliberately rejected by the management Bank. The claimant workman were denied regularization since the management Bank failed to conduct any recruitment since 2006 to 2011, though there were existing vacancies. As per the guidelines of Sainik Board, once an Ex-Servicemen is terminated, it is the duty of the employer to inform the Sainik Board within 90 days. This was not done by the management Bank. It is very clear from the averments in Para 12 & 13 of the written statement that the workmen were retrenched without following the relevant provisions of law as a retaliation for seeking regularization against post in which they were working. The dictum laid down by the Hon'ble supreme Court in **Uma Devi's Case and Somavir Singh's Case** Supra is not applicable to the present case as there was no back door entry which was a relevant point of consideration in those cases. The claimant workman were appointed by the management Bank against the existing regular vacancies after conducting interview and after being satisfied with the educational qualification and physical fitness. Management has no case that the claimant workman were not eligible, incompetent or unfit to hold the post at the time of their initial appointment.

9. On completion of pleadings, the Union examined WW-1 and WW-2 as their witness and marked Exhibits W-1 to W-15 on 4-3-2016 and 12-4-2016. Management examined their witness MW-1 on 20-3-2017. The management wanted to examine one more witness. The matter was adjourned to 17-5-2017. Inspite of several adjournments, the management didot take any steps for further evidence. On 12-3-2019, the matter was finally posted for evidence of the management. The management again sought time. Since this is one of the oldest pending cases in this Tribunal and there is a direction from the Hon'ble High Court Kerala in WP(C)6946/2018 to dispose off the matter on priority, the evidence of management was closed and the matter was posted for hearing. Further the matter was posted on 26-3-2019 for hearing. The case was adjourned since there was no representation from the management. On 9-5-2019, the Union filed argument notes and the management prayed for time for hearing and was finally adjourned to 2-7-2019. On 2-7-2019 also, the management sought time for filing argument notes and it was finally posted to 23-7-2019. Again management sought adjournment for filing argument notes which was rejected and the counsel for the Union was heard.

10. Having completed the pleadings and evidence, the following issues are framed for final decision-

(i) Whether the action of the management in not considering the temporary guards for regularization in permanent post is justified?

(ii) Relief and Costs?

11. Issue no. 1

According to the Union, the claimants in the industrial dispute were appointed as Security Guards by the management Bank against temporary vacancies during the period from 2005 to 2009 when there was no direct recruitment of Security Guards in the Bank. The counsel for the Union argued that as per the existing rules and instructions, the claimants are required to be settled by regularizing them as Security Guards/ watchman. All the claimants were eligible to be appointed as regular Security Guards in the management when they were inducted into the service of the management Bank as temporary Security Guards. As per the then prevailing practice, those Security Guards who were appointed on temporary basis are regularized against permanent vacancies. However the claimants were not considered for regularization in the management Bank. In the year 2011, the management initiated the process for recruiting Security Guards against permanent vacancies. The claim of the Union was not considered by the management on the ground that they crossed the age limit of 45 years as on the cut off date. According to the Union, taking a cut off date for people who are employed on temporary basis is irrelevant.

12. The Union also pleaded that the claimants herein has completed 240 days of continuous service within a span of 12 calendar months and they are entitled to be regularized as per various decisions of the Apex Court.

13. Hence it can be seen that the Union has claimed regularization on two independent grounds. Ist being that they are entitled for relaxation in age limit as per the existing rules and 2nd ground pleaded is that they have continuously worked for 240 days with the management Bank and they are entitled for regularization.

14. With regard to the claim of age relaxation for appointment, the management has taken a view that the same issue was considered by the Hon'ble High Court of Kerala in various cases and has finally held that the Union or its members has no claim for regularization relaxing the age limit as per recruitment rules of the management Bank. It is seen that the above issue has come up before the Hon'ble High Court through various writ petitions and was finally disposed off vide order dated 11-10-2012 in Writ Petition(C).No.9961/2011. In this case, the Hon'ble High Court considered whether the petitioners are entitled to be considered for appointment against Armed Guards in the management Bank. The common issue reiterated in the above said writ petitions were regarding the rejection of candidature of the applicants on the ground that they crossed the age limit of 45 years as on the last date of submission of the application. As per the guidelines issued by the management Bank for recruitment of Armed Guards, on the basis of circulars issued by Government of India, the selection has to be made from Ex-servicemen candidates already working in the temporary service of the Bank and also from among the candidates sponsored by the District Zilla Sainik Welfare Boards. As per Section 5(f) of the Comprehensive Instructions, Ex-Servicemen are entitled for age ceiling relaxation to the extent of full service in Armed Force and 3 years in addition thereto subject to the maximum age ceiling of 45 years. The Hon'ble High Court rejected the claim of the petitioners holding that " this Court cannot hold that the petitioners are entitled to be selected in the process of recruitment against permanent vacancies which is made through prescribed selection process on the basis of certain guidelines. Therefore the challenge against rejection of candidature on the basis of crossing upper age limit cannot be sustained."

15. Though the above writ petitions were dismissed, the Hon'ble High Court gave liberty to the petitioners to approach the appropriate authorities to claim regularization in service of the Bank or in seeking further modification of guidelines providing relaxation in upper age limit. The Hon'ble High Court also gave liberty to the petitioners **seeking regularization on the strength of temporary service put in by them**.

16. On the basis of the above observations, the petitioners moved the Assistant Labour Commissioner (C) seeking a direction to the management Bank for regularization in service of the temporary Security Guards. When the proceedings were pending before the ALC, the management Bank notified 170 vacancies of Armed Guards in various branches within Kerala circle to be filled up through direct recruitment. The temporary Security Guards who moved the ALC(C) filed an application for restraining the management Bank from going through the recruitment and the ALC issued an order restraining the management Bank from going ahead with recruitment. This decision ended up in lot of writ petitions before the Hon'ble High Court of Kerala. All these writ petitions were disposed off by a common order in Writ Petition No. 21153 of 2013. In this order also, the Hon'ble High Court considered whether the persons employed as temporary guards could be made permanent on the basis of the various demands made by the Ex-Servicemen. The Hon'ble High court rejected the claim for regularization and reiterated its earlier view that they will have to approach the Central Govt. to seek relaxation of upper age limit. Writ Appeals No. 64,65,66 of 2014 filed from the above order was also dismissed by the Hon'ble High Court vide its order dated 10-1-2014. In the Writ Appeals, the Hon'ble High Court suomoto impleaded the Union of India, Ministry of Defence and issued a direction that the representation of the Ex-Servicemen shall be considered and an appropriate decision shall be taken within 3 months time. It is seen that WW-1 through various representations like exhibits W-5,9 & 10 addressed both Defence Ministry and Finance Ministry seeking age relaxation and regularization. It is further seen that vide Exhibit W-7, the Defence Ministry forwarded the representation to Department of financial services with comments of Director General of Settlement. However no final decision is communicated so far.

17. The Union in this industrial dispute has come up with a case that Government of India, Ministry of Personnel, Public Grievance and Pensions vide its Notification dated 4-10-2012 has amended the Ex-Servicemen, (Re-employment in Central Civil Service and Posts) Rules 1979. According to Rule-4 of the amendment, Rule 5 regarding the age was substituted by Rule 5(a) . Substituted Rule-5(a) reads as follows-

> "For appointment to vacancies in Group B(Non-Gazetted), Group C or Group D posts in Central Government, an Ex Servicemen shall be allowed to deduct the period of actual military service from his actual age and **if the resultant age doesnot exceed the maximum age limit prescribed for the post for which he is seeking appointment by more than 3 years, he shall be deemed to satisfy the condition regarding age limit**."

18. Along with Exhibit M-3 dated 8-11-1990, the management Bank also produced a document dated 15-3-2013 titled "Re-employment of Ex-Servicemen- utilization of experience". This is supposed to be a reply given to a Rajya Sabha Question by the Defence Ministry. According to this, the department of Financial Services which is the nodal deptt. for Public Sector Banks and Insurance companies have issued instructions extending benefit of seniority and age relaxation to Ex-servicemen on re-employment. The extract from Indian Bankers Association Brochure of guidelines for Public Sector Bank is also annexed there to. At para-2.2 of the annexure with regard to age, the age relaxation as provided in the Ministry of Personnel amendment in Ex-Servicemen(Re-employment in Central Civil Service and Posts)Rules 1979 is incorporated. However the stand taken by the management Bank is that the instructions issued by the Bank as on 8-11-1990 continues to be the same and unless the instructions is amended by the Bank, the question of age relaxation cannot be considered.

19. Considering all the above facts, it is felt that the question regarding age relaxation for appointment/ regularization of the members of the Union has already been concluded by the various judgments of Kerala High Court discussed above and the only option available to the Union will be to pursue the petitions given to the Government of India to issue directions to amend the age relaxation rules of State Bank of India in line with the amended Ex-Servicemen (Re-employment in Central Civil Service and Posts) Rules 1979.

20. Another ground on which the Union claimed regularization under ID Act is that the claimants rendered continuous service of 240 days in a calendar year. This is denied by the management. The Union also failed to produce any evidence to support the claim that members of the Union has put in 240 days of continuous service in a calendar year with the management. The documents relied on by the Union are Exhibit W-1 and W-2. Exhibit W-1 is a letter dated 6-3-2013 issued by the Union to Assistant Labour Commissioner (C) showing the details of service rendered by the members of the Union with the management Bank. This letter only shows that these workmen worked with the management Bank for so many days during few years from 2009 to 2012-13. This document will not prove that the workmen worked for 240 days in a calendar year to satisfy the requirement of the definition of "continuous Service" under ID Act. Exhibit W-2 is a reply given by the District Sainik Welfare Officer to the workmen. This document shows tht the workman was deputed to SBI Kannur in 2006 and to SBI Thalassery in 2009. This document also will satisfy the requirement of ID Act.

21. In the absence of conclusive proof that the workmen worked for 240 days in a calendar year to satisfy the definition of "Continuous Service" under ID Act, this Tribunal will not be in a position to interfere in the matter. Hence the issue is answered in favour of the management and against the Union.

22. Issue No. 2

Because of the finding in issue no.1, the Union is not entitled to any benefit.

Hence an award is passed holding that the action of the Management Bank is not considering the temporary guards for regularization to permanent post is fully justified and the workmen are not entitled for any relief.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 25th day of September 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman -

WW-1 - Shri M.Radhakrishnan on 22-2-2016

WW-2 - Shri Joshy Joseph on 12-4-2016

Witness for the Management -

MW-1 - Shri Giji T.Jacob on 20-3-2017

Exhibits for the workman -

W-1 - Copy of letter dated 6-5-2019 addressed to ALC submitted by Union

W-2 - Copy of letter dated 27-12-2012 submitted by Union

W-3 - Copy of letter dated 13-6-2013 of Union addressed to the Director, Ministry of Finance.

W-4 - Notification dated 4-10-2012

W-5 - Copy of ordersheet dated 22-8-2018

W-6 - Copy of order regarding re-employment of Ex-Servicemen.

W-7 - Copy of Office Memorandum dated 27-2-2014

W-8 - Copy of letter dated 29-1-2014 of Union addressed to Director

W-9 - Copy of letter dated 27-7-2014 of Union addressed to Director

W-10 - Copy of letter dated 22-3-2014 of Union addressed to Director

W-11 - Copy of order dated 20-12-2013 passed in WA No.66 of 2014

W-12 - Copy of order dated 20-12-2013 in WP No. 21153 /2013(T)

W-13 - Copy of Ex-Servicemen ID Card issued to Shri Valsalan

W-14 - Copy of Certificate regarding of Shri Valsalan in Bank

W-15 - Copy of appointment order dated 27-7-96 issued to Shri Valsalan

Exhibits for the Management:-

M-1 - Copy of order dated 11-10-2012 in WP No. 9961 of 2011

M-2 - Copy of order dated 10-2-2014 in WA No. 545 of 2013

M-3 - Copy of Staff Circular No. 29 (90-91) dated 8-11-1990

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.